

Appendix Exhibit 6

Arbitration Transcript 6/9/09 with exhibits

R000381-R000758

BEFORE THE AMERICAN ARBITRATION ASSOCIATION

- - -

In the matter of the)

arbitration involving:)

)

BUILDING AND CONSTRUCTION)

LABORERS LOCAL UNION NO. 310,)

) Case Number:

Claimant,) 53 300 E 00098 09

and)

UNIVERSITY HOSPITALS HEALTH) Volume II

SYSTEMS, INC., et al.,)

Respondents.

- - -

BE IT REMEMBERED, that upon the hearing of
the above-entitled matter, held at Doubletree
Hotel, 1111 Lakeside Avenue, Cleveland, Ohio,
before Marvin J. Feldman, Impartial Arbitrator,
and commencing on Tuesday, the 9th day of June,
2009, at 10:00 o'clock a.m., at which time the
following proceedings were had.

- - -

1 APPEARANCES:

2

3 On Behalf of the Claimant:

4 GOLDSTEIN GRAGEL, LLC

5 BY: Susan L. Gragel, Attorney at Law

6 Ami Banderyt, Attorney at Law

7 1040 The Leader Building

8 526 Superior Avenue, East

9 Cleveland, Ohio 44114-1401

10 216/771-6633

11

12 On Behalf of the Respondents:

13 VORYS, SATER, SEYMOUR AND PEASE, LLP

14 BY: David A. Campbell, Attorney at Law

15 Charles F. Billington, III

16 Attorney at Law

17 2100 One Cleveland Center

18 1375 East Ninth Street

19 Cleveland, Ohio 44114-1724

20 216/479-6179

21

22 Also Present: Sue Peplowski

23 Mike Harting

24 Sebastian Trusso

25

1 I N D E X

2

3 **ON BEHALF OF THE EMPLOYER:**

4 **WITNESSES:** DIR CROSS RED. REC. FRD FRC

5

6 TODD GERBER 74 92 111 115 117

7 MIKE HARTING 119

8 LATTISIA HANSON 137 150 187 190

9 DAVID HAWK 196 214

10 HEATHER McDONNELL 221 232

11 SUSAN PEPOLOWSKI 240 257 267 269 270

12 MARGARET HEWITT 271 286 303 309

13

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1 **MS. GRAGEL:** I have a motion
2 before we get started.

3 **MR. FELDMAN:** What is your
4 motion?

5 **MS. GRAGEL:** I would move to
6 amend our grievance to include the Cleveland
7 Building Trades Council as an additional party
8 to the grievance. Mr. Terry Joyce is here with
9 me. He is the president of the Cleveland
10 Building Trades Council, and he would concur and
11 so advise the arbitrator of that joinder. The
12 purpose of this is to clear up any ambiguity,
13 because the hospital has contended recently that
14 the Project Labor Agreement does not apply to
15 this grievance inasmuch as it was filed by Local
16 310 and not the Cleveland Building Trades
17 Council. If the Cleveland Building Trades
18 Council joins in the grievance, it doesn't
19 change any of the issues here today, and there's
20 no prejudice to University Hospitals if this
21 occurs at this time.

22 **MR. CAMPBELL:** What is our
23 position? Our position is first and foremost
24 that University Hospitals and Gilbane have
25 raised the issue of arbitrability from the

1 outset of this. We have pointed to the fact
2 that their lack of parties to bringing this
3 grievance. So this is one where after we've
4 been through one set of -- an answer, a Motion
5 to Dismiss, one day of hearing to address our
6 Motion to Dismiss, a Federal Court process which
7 involved me filing a complaint, a Motion to Stay
8 and Motion For Temporary Restraining Order, and
9 in opposition to that, it is far too late in the
10 process for us to be here at this hearing today
11 adding a new party to this matter, so we
12 strongly object to it.

13 Number 2, this is not an employee of
14 the Building Trades Council. The Building
15 Trades Council have absolutely no relation to
16 this, and how they can file a Demand For
17 Arbitration at this point and amend, I don't see
18 how under the AAA process it could be on the day
19 of the hearing that we're going to have a new
20 party that the union believes is necessary and
21 critical to this.

22 So I think it necessarily means that
23 this matter should be dismissed by the mere fact
24 that they are moving to amend the complaints
25 after all of the process we've been through.

1 **MS. GRAGEL:** If I may respond
2 briefly, it is not the position of Local 310
3 that the Cleveland Building Trades Council is
4 necessary. Throughout these proceedings the
5 union has come forward saying that the Project
6 Labor Agreement is binding on University
7 Hospitals at each of the 17 unions that
8 comprised the Cleveland Building Trades Council.
9 But in the event that there is viewed by anybody
10 that there's some legal impediment to
11 proceeding -- to having this arbitration decided
12 on the merits because some organization isn't
13 named, they're here to be named.

14 **MR. FELDMAN:** Let me take a look
15 at the grievance in this case. Do you have it
16 with you?

17 **MS. GRAGEL:** I do.

18 **MR. CAMPBELL:** Can we mark this as
19 an exhibit so the record is clear?

20 **MR. FELDMAN:** Sure. Mark it.
21 (Thereupon, Union Exhibit 1 was
22 marked for purposes of
23 identification.)

24 **MS. GRAGEL:** We had intended to
25 offer it as Union 1. If you'd like to mark it

1 some other way, that's fine, too.

2 **MR. FELDMAN:** Union 1. That's
3 fine. This is the form of union?

4 **MS. GRAGEL:** Yes.

5 **MR. FELDMAN:** Did you prepare
6 these comments on this document?

7 **MS. GRAGEL:** Yes.

8 **MR. FELDMAN:** The reason I ask
9 is -- well, it may be that from the top of it it
10 says your claim confirmation number,
11 002-U9N-J50, and the notation of AAA. Is that
12 not right?

13 **MS. GRAGEL:** This is the
14 document that is generated after an online
15 filing. So as to the indication there, "claim
16 description," starting there, on December 1st,
17 2007 --

18 **MR. FELDMAN:** That is your
19 writing?

20 **MS. GRAGEL:** -- that is my
21 drafting. And the data that I inserted stopped
22 after the quotation from the arbitration clause.

23 **MR. FELDMAN:** Let me read this
24 for a moment.

25 Is there any prejudice that Cleveland

1 Building Trades is now --

2 **MR. CAMPBELL:** Absolutely.

3 **MR. FELDMAN:** What is it?

4 **MR. CAMPBELL:** The prejudice is
5 that we've been going through many motions and
6 arguments to the court with substantial costs
7 and time due to the lack of proper parties, and
8 that is not the only issue as to arbitrability.
9 And I might say that after this motion, I need
10 to make a statement as to arbitrability to make
11 the record clear. But to at this point, after
12 we've already been through arbitrability, after
13 we've already been through Federal Court
14 litigation, we've already had an argument with
15 the court, to now come in with the Building
16 Trades Council, it's not proper. It's
17 absolutely prejudicial to us. We already have a
18 complaint to vacate. You've already issued your
19 decision on arbitrability and we believe it
20 would be highly prejudicial to UH to now change
21 this record to bring in essentially a party with
22 no relevance to this except for to try to cure a
23 deficiency that they've known of since day one.

24

25 **MR. FELDMAN:** Several things.

1 The arbitrator does not know of any deficiency
2 in the writing before me.

3 **MR. CAMPBELL:** Then why include
4 them?

5 **MR. FELDMAN:** Secondly, I know of
6 no court proceedings in this matter because I've
7 not been privy to them nor a recipient of them.
8 So while I hear you, I'm not cognizant of it.

9 **MR. CAMPBELL:** Okay, understood.
10 I respect that position. All I'm saying if
11 there's not a reason to join them, then we are
12 just doing a meaningless act.

13 **MR. FELDMAN:** It doesn't really
14 make much difference because the Cleveland
15 Building Trades and Construction Trades Council
16 and various unions are stated in clear language
17 in the writing of the claim description. It is
18 true that the complainant's name is Building and
19 Construction Laborers Local Union 310 and the
20 council is not mentioned as part of the
21 claimants in this matter, but --

22 **MR. CAMPBELL:** Which is also
23 clear.

24 **MR. FELDMAN:** Yeah. I think it
25 may be too late to correct this by

1 inter-lineation in this matter. It should have
2 been thought of when you filed it and not now,
3 so I'm going to overrule your motion.

4 **MR. CAMPBELL:** Thank you.

5 **MR. FELDMAN:** If you think you
6 have another claim, then you file it. I don't
7 know if your time has lapsed.

8 **MS. GRAGEL:** We're prepared to
9 proceed on the arguments that we have advanced
10 throughout the arbitrability phase of this case.

11 **MR. FELDMAN:** The arbitrability
12 order is on the record.

13 **MS. GRAGEL:** We're ready to
14 proceed on the merits, and we believe that the
15 proper parties are here to proceed.

16 **MR. CAMPBELL:** If I can just make
17 a statement.

18 **MR. FELDMAN:** Hold on a minute.
19 Did you want to make a statement?

20 **MR. CAMPBELL:** Yes.

21 **MR. FELDMAN:** With regard to the
22 case?

23 **MR. CAMPBELL:** No, I just want to
24 make a statement because as the arbitrator
25 knows, and based on this motion it's quite

1 evident that one of the primary issues from the
2 outset of this Demand For Arbitration once it
3 was filed has been the respondents raising the
4 issue of arbitrability.

5 **MR. FELDMAN:** That's over with.
6 We're past that.

7 **MR. CAMPBELL:** Just for the
8 record, if I could, I just need to have a
9 statement that makes it clear, under the case
10 law we need to make clear that we are moving
11 forward with reservation, that we are still
12 challenging the arbitrability of this. We've
13 taken this not only to a Motion to Dismiss and
14 argued it to this arbitrator, but we've also
15 filed a complaint, which is still pending in the
16 Federal District Court for the Northern District
17 of Ohio. We've filed a Motion to Stay, which is
18 still pending, and we have a Temporary
19 Restraining Order, which was fully briefed and
20 denied last night orally and denied in writing
21 today without opinion.

22 **MR. FELDMAN:** Who is the court?

23 **MR. CAMPBELL:** It is Judge Boyko
24 from the Federal District Court, Northern
25 District of Ohio. I would be happy to provide

1 you with the filings after today's hearing.

2 **MR. FELDMAN:** I just want to see
3 the denial.

4 **MR. CAMPBELL:** It is just simply a
5 minute order which is denied. It just simply
6 says, "TRO denied."

7 **MR. FELDMAN:** Put it in the
8 record when you get to it.

9 **MR. CAMPBELL:** I think Ms. Gragel
10 has a copy and we would be happy to put it in
11 the record. We can put that in as Joint
12 Exhibit. Let me ask you one question. We
13 already had the PLA as a Joint Exhibit, I
14 believe.

15 **MS. GRAGEL:** That's correct.

16 **MR. CAMPBELL:** I'm assuming this
17 proceeding is a continuous record and we're now
18 on Joint Exhibit 2.

19 **MS. GRAGEL:** I think that makes
20 sense.

21 (Thereupon, Joint Exhibit 2 was
22 marked for purposes of
23 identification.)

24 **MR. CAMPBELL:** So Joint Exhibit 2,
25 Mr. Arbitrator, is the record from the Federal

1 District Court. It has denied the TRO without
2 the decision. And we are just simply stating
3 for the record that pursuant to the Sixth
4 Circuit decision in the Cleveland Electric
5 Illuminating Company, Utility Workers Union of
6 America, 440 F.3d 809 Sixth Circuit 2006, that
7 we are moving forward with reservations, that
8 the respondents continue to believe that
9 arbitrability should be reviewed by the Federal
10 District Court. We deny that this issue, this
11 Demand For Arbitration, Union Exhibit 1, is
12 properly arbitrated under the Project Labor
13 Agreement; and I just want to make clear for the
14 record that pursuant to the Sixth Circuit
15 authority, we're moving forward pursuant to the
16 court's direction as to the TRO with reservation
17 and we are maintaining our arbitrability
18 objections and arguments.

19 **MR. FELDMAN:** So ordered.

20 **MS. GRAGEL:** If I may --

21 **MR. FELDMAN:** What's Joint 1?

22 **MS. GRAGEL:** Joint 1,

23 Mr. Arbitrator, from the prior hearing was the
24 Project Labor Agreement with its appended
25 attachments. One, 2, 3, 4 are attached to Joint

1 1 as part of the Project Labor Agreement.

2 **MR. FELDMAN:** Let me just glance
3 at this for a moment, please. This is a
4 continuation of the hearing.

5 You wanted to make a statement.

6 **MR. CAMPBELL:** Yes. Thank you for
7 the time. I just wanted to make clear about our
8 position.

9 **MS. GRAGEL:** Very briefly, Local
10 310 disagrees with opposing counsel's
11 interpretation of the CEI case of the Sixth
12 Circuit.

13 **MR. FELDMAN:** That's going to be
14 argued in another forum.

15 **MS. GRAGEL:** And we do not
16 believe that this reservation of rights to
17 challenge jurisdiction is appropriate. The
18 facts of this case resemble those of CEI where
19 the court held that there had been a waiver of
20 the right to contest arbitrability in a court
21 tribunal by going through the process as we
22 have.

23 **MR. FELDMAN:** Ms. Gragel, there's
24 been no waiver here. The employer has presented
25 the issue of arbitrability ever since we sat

1 down the first time. He's presented it again
2 today, and as far as I'm concerned, they've not
3 waived anything in that regard by going forward.
4 I'm spreading that on the record. So I'm
5 overruling your commentary by virtue of what the
6 clear facts reveal.

7 Is there anything else?

8 **MS. GRAGEL:** The issue of CEI,
9 Your Honor, does require --

10 **MR. FELDMAN:** But that's --

11 **MS. GRAGEL:** -- the parties to
12 present --

13 **MR. FELDMAN:** That's going to be
14 argued in another forum. I'm not going to
15 comment on Federal Law unless I have to in
16 some -- I can't think of a fact in this case
17 that I'm talking about Federal Law.

18 **MS. GRAGEL:** Nor is the
19 arbitrator required to interpret Federal Law,
20 but the issue of CEI was fully briefed to Judge
21 Boyko. We don't accept the fact that there has
22 been any reservation of rights in an appropriate
23 way prior to this proceeding, and we simply
24 don't want the record to stand without that
25 response from us.

1 **MR. FELDMAN:** Anything else?

2 **MS. GRAGEL:** That's all on
3 behalf of union.

4 **MR. CAMPBELL:** I have one issue.
5 I don't know if we've decided it, but I do think
6 that based on the Demand for Arbitration, Union
7 1, it's evident that their argument is a matter
8 of contract interpretation. It's my
9 understanding in contract interpretation cases
10 that the union goes first.

11 **MR. FELDMAN:** Well, this is a
12 termination case, and you have to prove the
13 reason for the termination of the seniority and
14 I want you to go first. I don't think this is a
15 contract interpretation case. As far as I'm
16 concerned, this grievant was terminated from his
17 seniority by the attorney's client and I do want
18 you to go first.

19 **MR. CAMPBELL:** Okay. I just
20 wanted to note our objection for the record.
21 Can I do a brief opening statement?

22 **MR. FELDMAN:** Absolutely.

23 **MR. CAMPBELL:** Thank you.

24 The respondents in this case are
25 University Hospitals Health System and Gilbane

1 Construction Manager, Gilbane Construction. You
2 will hear witnesses from both University
3 Hospitals as well as Gilbane. In addition,
4 there's a third party that is relevant to the
5 respondent's position and that is Sodexho,
6 S-o-d-e-x-h-o. University Hospitals contracts
7 with Sodexho in order to run its cafeteria
8 services. In this case, the cafeteria in
9 question is on the main campus of University
10 Hospitals Health System, and I'm going to refer
11 to it as UH. The main campus is located on
12 Euclid Avenue in Cleveland, Ohio. The cafeteria
13 is quite large, and at the center of a number of
14 hospitals, including Rainbow Children's Hospital
15 and several of the other main hospitals as part
16 of the University Hospitals Health System.

17 Sodexho operates the cafeteria, and
18 in addition, supervises pursuant to contract
19 with UH certain UH employees. One of those UH
20 employees is Lattisia Hanson, who is employed as
21 a cashier in the cafeteria. She is a UH
22 employee employed pursuant to the policies and
23 procedures of UH.

24 **MR. FELDMAN:** She's a UH
25 employee?

1 **MR. CAMPBELL:** Yes. You will hear
2 Ms. Hanson testify, as well as a number of
3 Sodexo employees. A very large construction
4 project, as you know, Vision 2010, is ongoing
5 and has been ongoing for several years. Gilbane
6 manages the construction project, and the
7 contractors bid on and are granted -- their bids
8 are accepted pursuant to the Project Labor
9 Agreement between UH and Cleveland Building and
10 Construction Trades Council. The council is a
11 laborer organization, but not a party to this
12 Demand for Arbitration.

13 The PLA has many attributes to it,
14 including diversity, regionalism as to hiring
15 requirements that the union has agreed to assist
16 as to the City of Cleveland residents, MBE,
17 minority business enterprises, female business
18 enterprises, many other things. In addition,
19 the Project Labor Agreement includes that the
20 unions will comply with UH's code of conduct and
21 UH's policies and procedures pursuant to
22 paragraph 7 of the PLA.

23 On the night in question,
24 Mr. Harting, who is employed by Rivera
25 Construction Company -- again, Rivera is not a

1 party to this Demand for Arbitration and is not
2 here at this arbitration. Rivera was
3 Mr. Harting's employer. Rivera was working on
4 the UH project pursuant to the Project Labor
5 Agreements and pursuant to a bid. Mr. Harting
6 was never employed by UH or Gilbane, either of
7 the two respondents in this matter.

8 What transpired is, first of all,
9 when Mr. Harting and other union employees come
10 on, and I'm certain we'll hear the union
11 representatives testify to it, that they are
12 advised by Gilbane as to certain safety
13 procedures as well as the code of conduct that
14 they are to follow when on UH property. As with
15 any visitor, whether it's Dave Campbell visiting
16 the cafeteria, visits a patient or do legal
17 work, construction workers are granted employee
18 badges, are given directions as to areas that
19 they cannot go into and given directions as to
20 certain conduct they cannot partake in.

21 One of the areas that they cannot go
22 into in addition to patient areas without direct
23 authority is the cafeteria. Construction
24 workers have been advised and the Building
25 Trades Council have agreed that the construction

1 workers are to bring their own lunch or do
2 different things other than going into the
3 cafeteria that is on site UH property. You'll
4 hear Mr. Harting admit he and some of his
5 co-workers, some of his fellow union brothers
6 and sisters went into the cafeteria, and on the
7 night in question he believed he was
8 shortchanged when he went through the cash
9 register line by Lattisia Hanson, a UH employee
10 and cashier.

11 The Sodexho managers reviewed this
12 allegation on the film, reviewed the amount of
13 cash that was provided, and verified that there
14 was no shortchanging based on the video.
15 Whether or not there was a shortchanging,
16 Mr. Harting's response was highly inappropriate.
17 You'll hear Ms. Hanson say -- and for purposes
18 of this I'm going to have to use some language
19 that we would normally not use -- that he called
20 her a nigger, he called her a thief, and he did
21 this with a long line of both other union
22 employees and other visitors to UH.

23 Ms. Hanson -- in fact, it got to be
24 so loud and argumentative that Sodexho managers
25 had to come over and separate Mr. Harting from

1 the scene and asked him to leave the cafeteria.
2 The next day he came in and at this point
3 Ms. Hanson did not raise the racial comments,
4 just simply that Sodexho understood that this
5 gentleman was upset, believed he was
6 shortchanged. They reviewed the film,
7 determined that he wasn't shortchanged, but,
8 nonetheless, Sodexho, pursuant to their customer
9 relations mantra, not knowing that he was a
10 construction worker who shouldn't have been
11 there, not knowing about the racial comments,
12 tried to resolve the situation by giving him a
13 meal coupon that would remedy it as they would
14 with any customer that had a dispute.

15 Again, you'll hear Mr. Harting was
16 threatening, was cussing, again, called
17 Ms. Hanson a thief despite getting this. You'll
18 hear from a number of Sodexho managers that even
19 the following day he was calling her a "fucking
20 thief" and asking for her to be let go.

21 Ms. Hanson when she saw this came
22 forward and gave the complete story to Sodexho.
23 Sodexho recommended to UH that Mr. Harting not
24 be permitted to return to the cafeteria. UH,
25 and you'll hear Ms. Peplowski testify as an HR

1 manager fully investigated this, interviewed all
2 the relevant players, and determined that
3 Mr. Harting violated UH's policies, procedures
4 and code of conduct.

5 He stated in front of many other
6 people that Ms. Hanson was a thief, he was
7 threatening, he was loud, he was argumentative
8 and he used a racial slur. Anybody, whether a
9 construction worker, Dave Campbell or any other
10 visitor to UH or any employee would have been
11 excluded.

12 Based on that, you'll hear Gilbane's
13 representative come in and say that, yes, they
14 were directed to remove him. Before removing
15 him, they questioned him about whether he was in
16 the cafeteria on the night in question and
17 whether there was an incident. He freely
18 admitted that there was an argument and freely
19 admitted that he was upset.

20 At that point they excluded him from
21 the work site, as they continue to do when
22 somebody violates the policy. In fact, there's
23 another Laborer 310 representative who was
24 removed recently due to workplace violence. At
25 this point we have not had a grievance. We

1 fully expect that based on the arbitrability
2 decision we will get another one because
3 Laborers 310, it's their position that UH does
4 not have the right to exclude contractors or
5 employees from the work site if they violate our
6 policies and procedures.

7 We believe that the facts in this
8 case clearly show this is not a just cause
9 decision; there is nothing in the Project Labor
10 Agreement that says just cause, it's just simply
11 a matter of you will comply with our policies
12 and procedures. You will hear the evidence
13 clearly state that he violated our policies and
14 procedures and code of conduct, and it's UH's
15 position that he was properly excused from the
16 project. His seniority was not terminated by
17 UH. He was free to go work on any other project
18 in the community or any other project within
19 Laborers 310 jurisdiction.

20 He could have continued to work for
21 Rivera, and we'll hear if he did. He could have
22 went out to any non-UH project. Rivera or
23 whatever conduct they did, if they discharged
24 him pursuant to seniority, that was not at our
25 request. We simply said, Rivera, as long as

1 **MR. CAMPBELL:** We can get you a
2 copy of it. Let me step out to get a witness.

3 **MR. FELDMAN:** What part of this
4 do you say was -- you have a reference in your
5 opening statement to Joint Exhibit 1.

6 **MR. CAMPBELL:** Paragraph 7, page
7 3.

8 **MR. FELDMAN:** Thank you.

9 TODD GERBER
10 of lawful age, a witness herein, was examined
11 and testified as follows:

12 **MR. FELDMAN:** For the record, may
13 I have your name?

14 **MR. GERBER:** Todd Gerber.

15 **MR. FELDMAN:** T-o-d-d?

16 **MR. GERBER:** Correct.

17 **MR. FELDMAN:** G-e-r-b-e-r?

18 **MR. GERBER:** Correct.

19 **MR. FELDMAN:** Do you understand,
20 sir, that you're under oath?

21 **MR. GERBER:** Yes.

22 **MR. FELDMAN:** You may inquire.

23 **MS. GRAGEL:** Mr. Arbitrator, I'm
24 sorry, with the fan, is it Gerber?

25 **MR. GERBER:** G-e-r-b-e-r.

1 **MS. GRAGEL:** Thank you.

2 DIRECT EXAMINATION

3 **BY MR. CAMPBELL:**

4 **Q.** Could you please state your name?

5 **A.** Todd Gerber.

6 **Q.** Would you please spell Gerber?

7 **A.** G-e-r-b-e-r.

8 **Q.** Are you employed?

9 **A.** Yes.

10 **Q.** And who is your employer?

11 **A.** Gilbane Building Company.

12 **Q.** And how long have you been employed, I'm
13 going to refer to them as Gilbane. How long
14 have been employed by Gilbane?

15 **A.** Three and a half years.

16 **Q.** And what is your title?

17 **A.** Title is project engineer.

18 **Q.** And if you could briefly, what are your
19 duties? State your duties and responsibilities
20 as project engineer.

21 **A.** Actually I worked as the project manager on
22 the neonatal intensive care project.

23 **MR. FELDMAN:** On what project?

24 **MR. GERBER:** The NICU project,
25 University Hospitals NICU project.

1 **BY MR. CAMPBELL:**

2 **Q.** Okay. And so you worked as a project
3 manager on the NICU project. Is NICU N-I-C-U?

4 **A.** Correct.

5 **Q.** And what do you do as project engineer?

6 **A.** Responsible for the day-to-day activities
7 of the project, everything from, you know,
8 scheduling, to budget, those types of
9 activities.

10 **Q.** And when you say "project," is it for all
11 of Vision 2010 or certain portions of it?

12 **A.** Certain portions. Just the NICU project
13 was my responsibility.

14 **Q.** Tell us, how large is the Vision 2010
15 project.

16 **A.** The entire project for Gilbane consisted of
17 four projects, which was the Ahuja project, the
18 cancer project, the NICU project and the CEM
19 project.

20 **Q.** And if we're talking about construction
21 dollars, how many millions of dollars?

22 **A.** I think it's -- I think our contract is
23 approximately \$350 million.

24 **Q.** Is Vision 2010 larger than Gilbane's
25 portion of the construction?

1 **A.** Yes.

2 **Q.** Do you have an approximate amount?

3 **A.** I don't know anything beyond our portion.

4 **Q.** Are there other hospitals being
5 constructed?

6 **A.** In terms of --

7 **Q.** Outside of the Gilbane contract.

8 **A.** Are there other hospitals?

9 **Q.** Yes. Is there other construction projects
10 in Vision 2010?

11 **A.** Yes. If I'm not mistaken, there are.

12 There's other components such as -- like there
13 was a parking garage, a service building, there
14 were other components outside of our contract
15 for Vision 2010.

16 **Q.** What is Gilbane? As part of Gilbane's
17 portion of Vision 2010, what is Gilbane's title
18 on the project?

19 **A.** We are the construction manager for the
20 owner.

21 **Q.** Does Gilbane employ any of the actual
22 construction workers on the Vision 2010
23 projects?

24 **A.** In terms of labor force, workers, actually
25 performing a trade, no, Gilbane does not.

1 **Q.** Let's take it one step back. Let the
2 record reflect that I'm handing you, Mr. Gerber,
3 what's been marked as Joint Exhibit 1 and I want
4 to ask you, do you recognize that document?

5 **A.** Yes. This is the Project Labor Agreement.

6 **Q.** And tell us a little bit. What does the
7 Project Labor Agreement mean to Gilbane's duties
8 at UH?

9 **A.** Sure. The Project Labor Agreement means
10 that the owner has elected that the project be
11 performed with union labor; and this is the
12 agreement between the hospital or the owner and
13 the trade unions that formalized the agreement
14 that they're entering into.

15 **Q.** If you could turn to page 14 of that
16 document, and if you could look just so we're
17 clear as to the parties, it says, "In witness
18 hereof, the parties have hereunto set their hand
19 as of the date first above written," what are
20 the two parties on the right-hand side of page
21 14?

22 **A.** Sure. It's between University Hospitals,
23 Steve Stanley signed it, and Loree Soggs,
24 executive secretary is the title, and if I'm not
25 mistaken, he's part of the -- I don't know the

1 exact organization.

2 Q. What is the -- above Loree Soggs'
3 signature, what is the entity above it?

4 A. There it is, Cleveland Building and
5 Construction Trades Council.

6 Q. Is Gilbane a party to this Project Labor
7 Agreement?

8 A. No, we're not.

9 Q. Now, Gilbane has been asked by UH to
10 enforce the Project Labor Agreement on the
11 construction project?

12 A. Yes, that is our responsibility.

13 Q. Who actually employs the construction
14 workers? What type of entities? How is that
15 done? If Gilbane doesn't employ --

16 A. Sure. What we do is we go out and we will
17 hire what we refer to as a prime contractor, who
18 is a trade contractor that would actually
19 either, A, have agreements with the unions to
20 perform the work, or, B, their contracts would
21 be packaged and they would have subcontracts
22 underneath them with different companies that
23 provide the trade work for us.

24 Q. Now, let me ask you about Gilbane's rules.
25 Let me show you another group of exhibits.

1 (Thereupon, Respondent's Exhibit 1
2 was marked for purposes of
3 identification.)

4 **BY MR. CAMPBELL:**

5 **Q.** Todd, I've handed you what's been marked as
6 Respondent's 1. If you could, on your right
7 look at that group of documents. Do you
8 recognize Respondent's 1?

9 **A.** Yes.

10 **Q.** And what is Respondent's 1?

11 **A.** Respondent 1 is a series of documents from
12 the Gilbane Safety Plan. The top document is --
13 and as part of our safety plan all individuals
14 entering the project have to go through a safety
15 orientation, so the top three pages are actually
16 the safety orientation quiz that the individuals
17 take. They watch a video on safety and
18 infection control as part of that.

19 The third document as part of the safety
20 plan is a code of safe practices that we ask
21 everybody to sign off on.

22 **Q.** I want to refer you to number 11. Could
23 you read number 11?

24 **A.** Sure. "I will conduct myself in a
25 professional manner and not engage in any

1 violence, horseplay, practical jokes or other
2 behavior obnoxious to the general public. I
3 will not harass anyone else on site or any
4 member of the public, sexually or otherwise. I
5 will not bring onsite or write or draw any
6 sexually explicit materials."

7 **Q.** Okay. And are these provided to the union
8 employees when they come on site?

9 **A.** Sure. It's part of our safety orientation
10 process. And then actually the last page is
11 when all individuals complete the safety
12 orientation, they go to the hospital and
13 actually get a badge from the hospital as part
14 of the --

15 **Q.** And what is that badge? What does the
16 badge signify or what does it signify?

17 **A.** The badge signifies I guess a couple
18 things. Everybody saw the safety video,
19 everybody provided evidence of a negative drug
20 test, everybody provided a criminal background
21 check, and they completed all the orientation
22 requirements, and that badge allowed them access
23 into the hospital.

24 **Q.** Okay. And so the employee badge would have
25 been required of Mr. Harting, the Laborers 310

1 employee in question in this grievance?

2 **A.** Correct.

3 **Q.** Now, you were looking at the Project Labor
4 Agreement, Joint Exhibit 1, the larger document.
5 If you could turn to attachment D in that
6 document.

7 **MR. FELDMAN:** "D" as in dog?

8 **MR. CAMPBELL:** "D" as in dog, yes.

9 **MR. GERBER:** Yes.

10 **BY MR. CAMPBELL:**

11 **Q.** That is entitled Attachment D, Safety Plan.
12 What is that document?

13 **A.** This is the Gilbane Vision 2010 Safety
14 Plan.

15 **Q.** And if you could turn to page 8 of 67 of
16 Attachment "D" as in dog?

17 **A.** Yes.

18 **Q.** And do you see the responsibilities there
19 as to courtesy and personal conduct?

20 **A.** Yes.

21 **Q.** And "Courtesy: Employees shall observe
22 standards of behavior and conduct their work in
23 a manner to avoid offending any owner, employees
24 or visitors. Each individual on this project
25 must be given the courtesy that would be

1 extended to one's family or best friend." Do
2 you see that?

3 **A.** Yes.

4 **Q.** And then the personal conduct, it's
5 practical jokes, horseplay, scuffling or
6 wrestling or fighting is prohibited?

7 **A.** Yes.

8 **MR. FELDMAN:** I finally got to
9 page 67.

10 **MR. CAMPBELL:** I'm looking at two
11 portions of that, Courtesy, under all employees
12 shall observe the following rules of conduct,
13 and that is what Mr. Gerber read from as to the
14 family or best friend, and then the personal
15 conduct below.

16 **BY MR. CAMPBELL:**

17 **Q.** Todd, is Attachment D applicable to union
18 employees working in Vision 2010?

19 **A.** Yes.

20 **Q.** Now, let's talk about Mr. Harting. Have
21 you been involved in the issues that comprise
22 this grievance? Have you been involved with
23 Mr. Harting before today?

24 **A.** Yes.

25 **Q.** Tell the arbitrator how you've been

1 involved.

2 **A.** Sure. We had notice of an incident in the
3 cafeteria.

4 **MR. FELDMAN:** Can you tell me
5 when that occurred?

6 **MR. GERBER:** I can tell you it
7 was approximately January. The specific date, I
8 would have to go back --

9 **MR. FELDMAN:** I'm interested in
10 facts from the witness, not an opinion. Tell me
11 when it occurred.

12 **MR. CAMPBELL:** If you know.

13 **MR. FELDMAN:** He's got to tell me
14 what he knows about it.

15 **MR. CAMPBELL:** Absolutely.

16 **MR. GERBER:** I don't know the
17 specific date it occurred.

18 **MR. FELDMAN:** When did you first
19 get involved?

20 **MR. GERBER:** I received an
21 e-mail notice from my manager that there was an
22 incident in the cafeteria.

23 **MR. FELDMAN:** What date?

24 **MR. GERBER:** I don't know the
25 date off the top of my head. And from there we

1 contacted Ozanne Construction Company.

2 **BY MR. CAMPBELL:**

3 **Q.** And what is Ozanne, if you can tell us?

4 **A.** Ozanne was the prime contractor that
5 Gilbane was in contract with. We knew the
6 individual was a laborer. We had Mr. Harting's
7 last name. We gave that information to Ozanne
8 and requested them to come down to our offices
9 to discuss the incident.

10 **Q.** Did he come down?

11 **A.** Yes, he did, he came down.

12 **Q.** Do you recognize Mr. Harting?

13 **A.** Yes, I do.

14 **Q.** Is he sitting at the end of the table?

15 **A.** Yes, to my right.

16 **Q.** Tell us what happened in that meeting.

17 **MR. FELDMAN:** First tell me when
18 the meeting was.

19 **MR. GERBER:** The meeting was in
20 the evening at the end of the day.

21 **MR. FELDMAN:** You've got a date?

22 **MR. GERBER:** The date of the
23 meeting was the same date -- I don't know the
24 date off the top of my head. Mr. Harting was
25 working second shift. The meeting was

1 approximately 5:00 in the evening. He came down
2 to our offices with the supervisor from Ozanne
3 Construction and the project manager from Ozanne
4 Construction. We went into our conference room
5 with myself, Gilbane's general superintendent,
6 Mr. Harting and the two gentlemen from Ozanne.

7 **BY MR. CAMPBELL:**

8 **Q.** Let me ask you, did Gilbane independently
9 investigate this issue?

10 **A.** No. This was our investigation.

11 **Q.** But UH -- when you saw the e-mail, Gilbane
12 had been directed to exclude Mr. Harting from
13 the work site; is that correct?

14 **A.** Correct.

15 **Q.** And at that point your investigation was
16 limited to what you were --

17 **MR. FELDMAN:** Tell me when this
18 occurred.

19 **MR. CAMPBELL:** This occurred, I
20 believe based on our Demand for Arbitration,
21 we'll hear -- it says early February 2009. We
22 have the notes that the UH representatives will
23 testify as to the exact date. With that,
24 Mr. Gerber is here about this meeting and the UH
25 employees.

1 **MR. FELDMAN:** Could I have a date
2 of the meeting? Do you know that?

3 **MR. CAMPBELL:** Based on the Demand
4 for Arbitration it simply says early February
5 2009.

6 **MS. GRAGEL:** Do you know the
7 date and we can stipulate to it?

8 **MR. GERBER:** Is there a calendar
9 I can look at? I might be able to pinpoint a
10 date?

11 **MR. CAMPBELL:** Yes, I have my
12 written calendar. I'm handing him February
13 2009.

14 **MS. GRAGEL:** You might need to
15 go back to January.

16 **MR. CAMPBELL:** It looks like
17 January -- it happened in January and it looks
18 like early February, February 2nd or 3rd, I
19 believe.

20 **MR. GERBER:** I think the date we
21 met was February 2nd. We took the badge back
22 and we turned it over to the owner on February
23 3rd.

24 **MR. FELDMAN:** This meeting you're
25 talking about -- have a seat, sir.

1 **MR. GERBER:** Sure.

2 **MR. FELDMAN:** This meeting you're
3 talking about occurred on February 2nd?

4 **MR. GERBER:** Yes, I believe.

5 **MR. FELDMAN:** And does that
6 refresh the date that you received the e-mail?

7 **MR. GERBER:** Yes.

8 **MR. FELDMAN:** What was that date?

9 **MR. GERBER:** February 2nd.

10 **MR. FELDMAN:** So you got an
11 e-mail on February 2nd and subsequent to that
12 e-mail you had a meeting somewhere around --

13 **MR. GERBER:** 5:00 in the
14 evening.

15 **MR. FELDMAN:** 7:00 p.m.?

16 **MR. GERBER:** 5:00 p.m. was the
17 meeting.

18 **MR. FELDMAN:** That was
19 February 2nd, 2009?

20 **MR. GERBER:** Correct.

21 **MR. CAMPBELL:** If you could tell
22 us what happened at that meeting to the best of
23 your recollection.

24 **MR. GERBER:** Sure. At the
25 meeting Mr. Harting came in. We inquired if

1 there was an incident in the cafeteria. He
2 explained he had purchased some food and there
3 was an issue with some change. We asked him if
4 he knew he wasn't supposed to be in the
5 cafeteria. He said he was. We said for that
6 reason we have to take his badge back, which we
7 did. He turned over his badge to us, and we
8 informed him that he was no longer to go into
9 the facility and he had to leave the project
10 site.

11 **BY MR. CAMPBELL:**

12 **Q.** Two questions. First of all, as to the
13 cafeteria ban, tell the arbitrator about that.

14 **A.** Part of the UH rules is that they did not
15 want us to -- they didn't want any of the
16 contractors to use their facilities for their --
17 their facilities were for the patients, so that
18 was a rule we passed on to all the contractors.

19 **Q.** So it was not just the cafeteria, it was
20 other areas of the hospital that patients were
21 normally using?

22 **A.** The rule is specific to the cafeteria.
23 They did not want them using the cafeteria.

24 **Q.** Did Mr. Harting describe to you any of the
25 incident involving the shortchanging in his

1 view?

2 **A.** Yes. He explained that he was waiting in
3 line for a period of time. When he got to the
4 register, he gave them some money. He either
5 gave them a 10 or a 20, and they gave back
6 change that wasn't consistent with the money he
7 gave them. My understanding is there was a
8 verbal altercation.

9 **MS. GRAGEL:** Objection.

10 **BY MR. CAMPBELL:**

11 **Q.** Did he tell you that there was a verbal
12 altercation?

13 **A.** Yes. My understanding is there was a --

14 **MR. FELDMAN:** Understanding isn't
15 sufficient.

16 **BY MR. CAMPBELL:**

17 **Q.** You need to testify what he told you at
18 that meeting. Instead of "my understanding," if
19 you could say what he told you at the meeting.

20 When you sat down with Mr. Harting, if you
21 could -- instead of saying "my understanding,"
22 say Mr. Harting informed me --

23 **A.** Sure. Mr. Harting informed me that an
24 argument ensued over the change, that a manager
25 came out, and I think he got a coupon, and then

1 I think he left.

2 Q. Were you involved in any of the subsequent
3 meetings between his union and UH requesting him
4 to be returned to the work site?

5 A. I was not involved in any meetings.

6 Q. Have other union employees been excluded
7 from the UH work site, to your knowledge, for
8 any period of time whether permanently or for a
9 short period of time?

10 A. Yes.

11 Q. How many, to your knowledge?

12 A. I'm aware of an individual being removed on
13 the CEM project and an individual being removed
14 on the cancer project.

15 MS. GRAGEL: Can we have time?
16 Can we have a function of time.

17 MR. CAMPBELL: I'm going to ask
18 him that.

19 BY MR. CAMPBELL:

20 Q. When was the CEM project completed
21 approximately?

22 A. Approximately in the fall.

23 Q. Of 2008?

24 A. Of 2008.

25 Q. To your knowledge, was there any grievances

1 or arbitrations under the Project Labor
2 Agreement arising out of that?

3 **A.** Not that I'm aware of.

4 **Q.** And you mentioned a second. What happened
5 on the second exclusion, to your knowledge?

6 **A.** It was on the cancer project, and in terms
7 of timing, it was just recently.

8 **MR. FELDMAN:** It was what?

9 **MR. GERBER:** Just recently.

10 **BY MR. CAMPBELL:**

11 **Q.** Within days of today?

12 **A.** I don't know.

13 **Q.** Certainly within weeks?

14 **A.** Yes, within weeks of today.

15 **MR. FELDMAN:** Subsequent activity
16 can hardly prove prior.

17 **MR. CAMPBELL:** I just wanted to --
18 you can take it as you may.

19 Give me a moment to see if there's
20 any other questions I have for Todd. I don't
21 have any further questions for Mr. Gerbert at
22 this time subject to the cross.

23 **MS. GRAGEL:** Could I request a
24 five-minute recess?

25 **MR. FELDMAN:** Make it a

1 ten-minute.

2 **MR. CAMPBELL:** Let the record
3 reflect I will not talk to Todd while he's on
4 the stand.

5 (Thereupon, a recess was taken.)

6 **MR. FELDMAN:** Are you ready for
7 cross-examination?

8 **MS. GRAGEL:** I am.

9 CROSS-EXAMINATION

10 **BY MS. GRAGEL:**

11 **Q.** Mr. Gerber, during the time that you were
12 project engineer for University Hospitals, was
13 all of your work at the NICU project?

14 **A.** Yes.

15 **Q.** And that's on the main campus, correct?

16 **A.** Correct.

17 **Q.** Was that where you maintained your business
18 office?

19 **A.** Yes.

20 **Q.** Did you have an office or a trailer?

21 **A.** We have an office complex, which consists
22 of seven trailers approximately, down by the
23 corner of University Hospital Drive and Euclid
24 Avenue.

25 **Q.** And how far away from that -- from the main

1 cafeteria is that complex of trailers?

2 **A.** A couple hundred yards.

3 **Q.** During the three and a half year time that
4 you worked on site, did you go in the cafeteria?

5 **A.** I'd like to make a correction. I was only
6 on site a little over a year and a half, and I
7 never purchased anything from the cafeteria.

8 **Q.** Did you go in the cafeteria?

9 **A.** I've walked through the atrium space which
10 is adjacent to the cafeteria, but I never went
11 into the cafeteria proper.

12 **Q.** So you don't know if there were
13 construction workers eating or buying things in
14 the cafeteria?

15 **A.** No, I don't.

16 **Q.** Did you ever, yourself, or have anyone from
17 Gilbane do a walk-thru to check on that?

18 **A.** No, other than at our weekly progress
19 meetings we advised the contractors and reminded
20 them not to use the facilities.

21 **Q.** And those weekly progress meetings would be
22 attended by contractors?

23 **A.** By our prime contractors, yes.

24 **Q.** And Ozanne was a prime contractor?

25 **A.** Correct.

1 **Q.** And did you have any knowledge as to how,
2 if at all, Ozanne communicated that to its
3 subcontractors?

4 **A.** I do not.

5 **Q.** And do you know how, if at all, Ozanne
6 communicated it to its construction workers?

7 **A.** I'm not aware of how they communicated with
8 their trades.

9 **Q.** And do you know, sir, whether there was any
10 posted notice at or around the cafeteria at
11 University Hospitals regarding the rule you've
12 described here at this hearing today?

13 **A.** I'm not aware of a posted notice.

14 **Q.** You have, sir -- can you get in front of
15 you Respondent's Exhibit 1, which is the
16 Comprehension Quiz?

17 **A.** Okay.

18 **Q.** First of all, was this video -- was this
19 done by video, or on the computer, or how was
20 this done?

21 **A.** Safety orientation consisted of two videos,
22 if I'm not mistaken.

23 **Q.** And were those done in the Gilbane trailer
24 or somewhere else?

25 **A.** Yes, the Gilbane trailer.

1 Q. When you worked during that one and a half
2 year period on site, what was the last day that
3 you worked on site, or are you still there?

4 A. I'm still on site.

5 Q. So we go back about 18 months to, what,
6 January of '08 is about when you started?

7 A. Correct.

8 Q. So between January of '08 and now, what was
9 your usual work schedule?

10 A. I pretty much work starting approximately
11 at 7:00 in the morning to 6:30 in the evening
12 would be a typical day.

13 Q. And for construction workers who were
14 coming in to work the second shift, do you know
15 when and how they received the videos that were
16 part of the orientation?

17 A. Orientation times were provided for the
18 first and the second shift.

19 Q. You said that the Gilbane part of the 2010
20 project covered NICU?

21 A. Correct.

22 MR. FELDMAN: Let's go back a
23 minute. Was your answer that orientation times
24 were for the first and second shift?

25 MR. GERBER: Correct. We did

1 multiple orientations. We would do an
2 orientation for the morning group of individuals
3 and for the second shift group of individuals.

4 **MR. FELDMAN:** And this was
5 supposed to cover every trade on the block?

6 **MR. GERBER:** Every individual
7 that steps foot on the project is to go through
8 the Gilbane safety orientation.

9 **MR. FELDMAN:** And do you have
10 knowledge that the grievant attended the
11 orientation?

12 **MR. GERBER:** I would have to go
13 back and check our records to confirm when he
14 was oriented.

15 **MR. FELDMAN:** Do you think that's
16 an important facet?

17 **MR. GERBER:** Yes.

18 **MR. FELDMAN:** Then why don't you
19 have it with you?

20 **MR. GERBER:** I don't have an
21 answer for that. The only answer I could
22 provide you is the individual did have a badge,
23 which would indicate he was oriented because the
24 orientation is part of the badging process,
25 which is the last sheet -- the badge

1 requirements are the last sheet of the handout.

2 **MR. CAMPBELL:** He's referring to
3 Respondent 1, the last page of Respondent 1.

4 **MR. FELDMAN:** I understand.
5 Continue, please.

6 **BY MS. GRAGEL:**

7 **Q.** Following up on one of the arbitrator's
8 questions, and I'll go back to the job site
9 question, were you asked by University Hospitals
10 to provide to the investigator who was looking
11 into the incident about Mr. Harting verification
12 that he had gone through the orientation
13 process?

14 **A.** At what time are you referring to?

15 **Q.** Back in January or February of 2009.

16 **A.** No, we were never asked to provide evidence
17 of the orientation. We were requested to get
18 his badge and turn it back in to the hospital.

19 **Q.** Now, I had started to ask you, sir,
20 Gilbane's role as construction manager covered
21 the NICU project plus three other projects I
22 think you said?

23 **A.** If you go to Exhibit A, the PLA, I noticed
24 Exhibit A identifies all of the projects covered
25 by the -- page 15 on the --

1 **Q.** Page 15 of Joint Exhibit 1.

2 **A.** Yes. So Gilbane's -- our contract with
3 University Hospitals covers the Cancer Hospital,
4 the Center for Emergency Medicine, the Neonatal
5 Intensive Care Unit, and our other project is
6 the Ahuja Medical Center, which is not on
7 campus, which potentially may not be part of
8 this PLA. I'm not certain of that. It is not
9 listed as one of the covered projects.

10 **Q.** Ahuja is out in Beachwood or Pepper Pike.

11 **MR. CAMPBELL:** Ahuja is part of a
12 second PLA that is outside the City of
13 Cleveland. Mr. Arbitrator, we have two PLAs,
14 one for the City of Cleveland which includes the
15 main campus, and the second that includes
16 projects outside the City of Cleveland.

17 **MR. FELDMAN:** Let's stay in the
18 town where the grievant was involved.

19 **BY MS. GRAGEL:**

20 **Q.** The three projects that are listed here on
21 Exhibit A, cancer, emergency medicine and
22 neonatal intensive care, they are all in
23 downtown Cleveland around University Hospitals'
24 main campus, correct?

25 **A.** Main campus.

1 **Q.** Would you look with me back to Respondent's
2 Exhibit 1 of the orientation quiz? And all this
3 was done at the trailer down the street from
4 University Hospitals' cafeteria area?

5 **A.** Correct, at main campus.

6 **Q.** The third page of this is the project code
7 of safe practices, correct?

8 **A.** Correct, which as a side note is part of
9 the safety plan, which actually is this page of
10 the safety plan.

11 **MR. CAMPBELL:** Let the record
12 reflect he's pointing to Attachment D of Joint
13 Exhibit 1.

14 **MR. GERBER:** I think it's
15 page -- it's hard to read. It looks like
16 page 52 of 67 of the safety plan.

17 **MR. CAMPBELL:** Of Joint Exhibit 1,
18 Attachment D. I want the record to be clear.

19 **BY MS. GRAGEL:**

20 **Q.** My question, sir, is back to the project
21 safety code page that's in Respondent's Exhibit
22 1. Is there anyplace in points 1 to 13 that
23 tells the construction workers that were working
24 on the main campus that they were not allowed to
25 eat in the cafeteria of University Hospitals?

1 **A.** Item 7 says, "I will eat in designated
2 areas and dispose of trash in proper
3 containers." There is a list of University
4 Hospitals' rules that is incorporated in
5 everybody's contract, and one of the rules was
6 to not use the cafeteria.

7 **Q.** My question is, is it on this sheet of
8 paper?

9 **MR. CAMPBELL:** Object. Asked and
10 answered.

11 **MR. GERBER:** I answered yes,
12 that they are to eat in designated areas, and
13 the cafeteria was a non-designated area.

14 **BY MS. GRAGEL:**

15 **Q.** And if I'm looking at this page, how do I
16 know that from looking at this page?

17 **A.** There is other information covered at the
18 safety orientation meeting.

19 **MR. FELDMAN:** Answer the
20 question.

21 **MR. GERBER:** It is not on this
22 page, other than --

23 **MR. FELDMAN:** Next question.

24 **BY MS. GRAGEL:**

25 **Q.** Now, then, you started talking to me a bit

1 about the actual project safety plan, which is
2 part of -- which is Attachment D to Joint
3 Exhibit 1. And Mr. Campbell asked you some
4 questions about page 8, do you see that? Can
5 you get to that with me?

6 **MR. FELDMAN:** Page 8 of 67?

7 **MR. CAMPBELL:** Yes, of Attachment
8 D.

9 **MR. GERBER:** Yes.

10 **BY MS. GRAGEL:**

11 **Q.** And under that section, sir, for courtesy,
12 it reads: "Employee shall observe standards of
13 behavior and conduct their work in a manner to
14 avoid offending any owner, employees or
15 visitors. Each individual on this project must
16 be given the courtesy that would be extended to
17 one's family or best friend."

18 Do you know, because I haven't seen the
19 training video, whether there's any explanation
20 on the training video beyond this statement
21 that's here in the project safety plan?

22 **A.** I don't know if there's any other
23 additional information in the safety video
24 regarding courtesy.

25 **Q.** Would you turn with me then, sir, to page

1 15 of 67? About in the middle of the page, do
2 you see in bold-face the "1st Citation" and "2nd
3 Citation"?

4 **A.** Yes.

5 **Q.** And two paragraphs up above first citation
6 there's a line that says -- and tell me if I'm
7 reading it correctly: "Repeated violations or
8 lack of cooperation with regard to the project
9 safety plan by employees of a contractor will
10 indicate non-compliance with provisions included
11 in the contract and may be reason for the
12 employee being barred from the project site
13 and/or termination of the contractor's
14 contract." Do you see that?

15 **A.** No. Where are you again?

16 **Q.** Two paragraphs up above the bold-face 1st
17 citation?

18 **A.** Yes.

19 **Q.** See that phrase starting "Repeated"?

20 **A.** Yes.

21 **Q.** Earlier today you testified that on or
22 around February 2nd you and Ozanne
23 representatives met with Mr. Harting.

24 **A.** Yes.

25 **Q.** Had you at any time prior to February 2nd

1 had occasion to have any interaction with
2 Mr. Harting about violations of the project
3 safety plan?

4 **A.** No.

5 **Q.** And then, sir, after the -- there's
6 references to the 1st citation. Did you have
7 occasion before February 2nd, 2009 to issue a
8 1st citation to Rivera based on conduct of
9 Mr. Harting?

10 **A.** Mr. Harting was in the cafeteria. There
11 was a rule by University Hospitals that we were
12 not to use their cafeteria. He was removed for
13 being in the cafeteria in violation of that
14 rule.

15 **Q.** Now, can you answer my question?

16 **MR. FELDMAN:** Excuse me. Was
17 that the only reason for his removal?

18 **MR. GERBER:** Yes, because he was
19 in the facility he was not supposed to be in.

20 **BY MS. GRAGEL:**

21 **Q.** Now, to answer my question, before that
22 date had Gilbane issued a 1st citation to Rivera
23 construction based on activity of Mr. Harting?

24 **A.** No.

25 **Q.** So being that a 1st citation was never

1 issued, I take it that Rivera Construction was
2 not issued a 2nd citation, correct?

3 **A.** Correct.

4 **Q.** Down, then, sir, at the bottom of this page
5 there's a bold-faced "Immediate removal from the
6 property citations."

7 **A.** Yes.

8 **Q.** And the first one talks about exposing
9 employees to imminent loss of life, correct?

10 **A.** Yes.

11 **Q.** I take it that didn't happen based on
12 anything you heard in the cafeteria -- about the
13 cafeteria incident prior to February 2, 2009?

14 **A.** Correct.

15 **Q.** Which of these eight immediate removal
16 areas did you consider to be applicable when you
17 acted upon the instructions to remove
18 Mr. Harting?

19 **A.** I would say it would fall under the
20 "violent physical encounter."

21 **Q.** And did you have information, sir, at --
22 first of all, violent physical encounter refers
23 to fighting, correct?

24 **A.** Well, violent physical encounters defines
25 fighting as one of the encounters.

1 **Q.** Do you, as you sit here today, have any
2 information indicating that Mr. Harting engaged
3 in a physical fight with Lattisia Hanson or with
4 any employee at the hospital or Sodexho?

5 **A.** A physical fight, no; but a verbal
6 altercation, they expressed that they were
7 intimidated by Mr. Harting.

8 **Q.** Where, sir, in this list of eight does it
9 take about verbal altercation as being a grounds
10 for immediate removal from the property? It's
11 not there, is it?

12 **A.** He was immediately removed from the
13 property for being in the facility as I've
14 explained, which is another rule, another
15 contractual rule that all the contractors were
16 to follow and that all the contractors were
17 advised of.

18 **Q.** Is that rule part of the Project Labor
19 Agreement or any of attachments in front of you,
20 sir?

21 **A.** No, but that rule is part of our contract
22 with our contractors.

23 **Q.** Moving to a different subject here, in the
24 months before February 2, 2009, did you have
25 occasion to directly supervise Mr. Harting at

1 any of the work that he did?

2 **A.** I am not a field supervisor, so, no.

3 **Q.** Do you know where he was assigned to work
4 within the neonatal project?

5 **A.** He was on the second shift, he was a
6 laborer doing laboring activities.

7 **Q.** Do you know, sir, whether -- first of all,
8 do you know Pat Tony?

9 **A.** Yes. Pat Tony was Gilbane's general
10 superintendent.

11 **Q.** Did you on February 2nd or at any other
12 time have occasion to discuss Mr. Harting's
13 performance with Mr. Tony?

14 **A.** I never discussed Mr. Harting's
15 performance.

16 **Q.** So on February 2nd, 2009 when you caused
17 his removal from the job site, you didn't know
18 whether he was doing a good job as a laborer or
19 a bad job?

20 **A.** No, I knew he was a good employee.

21 **Q.** And, finally, or close to finally, on
22 February 2nd, 2009 you said you received an
23 e-mail from somebody about this incident.

24 **A.** Yes. I was informed about the incident by
25 my manager at Gilbane.

1 **Q.** And who was your manager?

2 **A.** John Sosnowski.

3 **Q.** And the e-mail you received, do you have a
4 copy of it here today?

5 **A.** No.

6 **MS. GRAGEL:** Do you have a copy
7 of it, Mr. Campbell?

8 **MR. CAMPBELL:** No.

9 **MR. GERBER:** And I would like to
10 clarify, it could have been a phone
11 conversation. I would have to go back to see
12 how he communicated to me. It was either a
13 phone conversation or an e-mail.

14 **BY MS. GRAGEL:**

15 **Q.** Did you receive any description of what
16 anybody was saying had happened?

17 **A.** Yeah. My understanding is there was an
18 incident in the cafeteria which led to a verbal
19 altercation, and the employee needed to be
20 removed.

21 **Q.** And the directive to remove Mr. Harting was
22 related to you by Mr. Sosnowski saying, "I want
23 him removed," or was it --

24 **A.** My understanding is it was -- in talking
25 with Mr. Sosnowski, that the request was from

1 the hospital.

2 Q. So after that then you called Ozanne --

3 A. Correct.

4 Q. -- to bring Mr. Harting to a conference
5 room, correct?

6 A. Correct.

7 Q. Who came from Ozanne?

8 A. Tony Gallata, who is their superintendent;
9 Fred Kruse, their project manager.

10 Q. And just so that I'm clear, Ozanne was what
11 kind of contractor on the job?

12 A. Their contract was for general trades.

13 Q. And you did not call anyone from Rivera
14 Construction into the meeting, correct?

15 A. Well, we were not in contract with Rivera.
16 Our contract was with Ozanne. We knew that the
17 individual was within the Ozanne contract.

18 Q. And you also know that Rivera Construction
19 was supplying laborers, but that Ozanne was
20 directing the work, day-to-day work of them,
21 correct?

22 A. Correct.

23 Q. Rivera was not on site?

24 A. When you refer to Rivera, are you referring
25 to a company representative or --

1 **Q.** Mr. Rivera.

2 **A.** Mr. Rivera was not on site.

3 **Q.** And no Rivera supervision was on site?

4 **A.** Not that I'm aware of.

5 **Q.** And you understood Rivera is an MBE
6 contractor, correct?

7 **A.** Correct.

8 **Q.** And as part of the purposes of the Project
9 Labor Agreement, having MBE contractors
10 participate in the way that Rivera did was part
11 of the overall project?

12 **A.** MBE participation was a component of the
13 project.

14 **Q.** Just a couple further questions, sir. You
15 have in front of you Joint Exhibit 1, Project
16 Labor Agreement. Paragraph 6 of this Project
17 Labor Agreement, sir, refers to construction
18 managers, does it not? That's on page 3.

19 **A.** Correct.

20 **Q.** And according to paragraph 6, such
21 construction managers shall be required to
22 acknowledge and execute this agreement.

23 Do you know whether Gilbane Construction
24 Company has ever actually signed a copy of the
25 Project Labor Agreement?

1 **A.** No, we haven't that I'm aware of.

2 **Q.** I take it by virtue of the fact that you
3 worked for a year and a half in making sure the
4 Project Labor Agreement went forth, Gilbane
5 acknowledged the Project Labor Agreement?

6 **A.** Yes, we acknowledged the Project Labor
7 Agreement.

8 **Q.** And you've seen it before today?

9 **A.** Yes.

10 **Q.** And you know that throughout the Project
11 Labor Agreement there are many, many references
12 to unions?

13 **MR. FELDMAN:** To what?

14 **MS. GRAGEL:** To unions.

15 **MR. GERBER:** Yes.

16 **BY MS. GRAGEL:**

17 **Q.** Would you look specifically with me, sir,
18 at page 4, paragraph 8? And do you see
19 paragraph 8, about six lines up from the bottom
20 of it it says, "The terms and conditions of this
21 agreement shall define and govern the
22 relationship among UH and the unions."

23 **A.** Okay.

24 **Q.** That's in the agreement, is it not?

25 **A.** Yes.

1 **Q.** And without going through every line and
2 every paragraph of this agreement, you'd
3 acknowledge, would you not, that that kind of
4 sentiment, that unions and UH are governed by
5 this agreement, appears throughout the Project
6 Labor Agreement?

7 **MR. CAMPBELL:** I'd object. The
8 agreement speaks for itself.

9 **MS. GRAGEL:** Fair enough. I'll
10 withdraw it.

11 **MR. FELDMAN:** Anything further?

12 **MS. GRAGEL:** I have nothing
13 further for this witness right now.

14 **MR. FELDMAN:** Any redirect?

15 **MR. CAMPBELL:** Yes, a couple quick
16 questions for Mr. Gerber.

17 REDIRECT EXAMINATION

18 **BY MR. CAMPBELL:**

19 **Q.** You were asked a lot of questions about the
20 cafeteria. Did Mr. Harting acknowledge the
21 cafeteria rule in your meeting with him?

22 **A.** Yes. Yes, I believe he did.

23 **Q.** And you went through the Gilbane safety
24 rules as to how the employees are advised of
25 some of the rules and regulations applicable to

1 them. In this case, did UH make the decision to
2 exclude Mr. Harting?

3 **A.** Yes.

4 **Q.** And UH did all of the investigation but for
5 you sitting down with Mr. Harting as you've
6 described?

7 **A.** Yes.

8 **Q.** And I want to refer you to paragraph 7 of
9 the Project Labor Agreement, page 3. If you
10 could read paragraph 7 to yourself and then let
11 me know once you've read through it.

12 **A.** Paragraph 7, page 3?

13 **Q.** Yes.

14 **A.** Okay.

15 **Q.** And this is one of those mentions of
16 unions, you see that in the middle there of
17 paragraph 7, that Ms. Gragel referred you to?
18 See "unions," line 4?

19 **A.** Yes.

20 **Q.** And paragraph 7 is stating that the unions
21 and these covered projects are going to be --
22 the covered projects will be completed pursuant
23 to UH's policies and procedures as may be
24 amended from time to time and UH's code of
25 conduct, do you see that?

1 **A.** Yes.

2 **Q.** Were you involved in UH's investigation as
3 to the violation of its policies and procedures
4 and code of conduct as to Mr. Harting?

5 **A.** No. No, I was not.

6 **Q.** So you're not privy to all the facts and
7 circumstances relating to the cafeteria incident
8 in question?

9 **A.** No, I'm not.

10 **Q.** And just as a final point, just to verify,
11 the Gilbane Safety Plan and the policies and
12 procedures that you went through with Gilbane,
13 those are all prerequisites to being able to
14 obtain an employee badge?

15 **A.** Correct.

16 **Q.** Did Mr. Harting, to your knowledge, have an
17 employee badge?

18 **A.** Yes, he did. He returned it back to us at
19 our meeting in the conference room.

20 **Q.** So if Mr. Harting and his employer followed
21 the requirements of the Project Labor Agreement,
22 he would have gone through the Gilbane safety
23 seminar that you've discussed here today?

24 **A.** Correct.

25 **Q.** Now, when you referred to the Gilbane

1 safety program as to exclusion by Gilbane,
2 Gilbane has the right to exclude tradesmen from
3 the project in and of itself, correct?

4 **MS. GRAGEL:** Objection.

5 **MR. FELDMAN:** What's the reason
6 for your objection?

7 **MS. GRAGEL:** The project safety
8 plan speaks to what can be an exclusion or not
9 an exclusion, and that document speaks for
10 itself, too.

11 **MR. FELDMAN:** He may answer.

12 **BY MR. CAMPBELL:**

13 **Q.** You can answer.

14 **A.** A safety plan is not the only reason of
15 exclusion of companies and individuals from the
16 project.

17 **Q.** And, to your knowledge, did UH rely on the
18 Gilbane Safety Plan in investigating
19 Mr. Harting's issues?

20 **A.** I don't know.

21 **Q.** And as to -- you were asked whether there
22 was more elaboration as to the code of conduct
23 in the Gilbane Safety Plan as to treating
24 employees and visitors on the project like you
25 would treat your family members or best friends.

1 Do you think there needs to be an explanation as
2 to that statement beyond the words?

3 **A.** Can you repeat the question?

4 **Q.** Ms. Gragel referred you to page 8 of safety
5 plan Attachment D as to courtesy where it
6 stated, "Each individual on this project must be
7 given the courtesy that would be extended to
8 one's family or best friend." She asked you
9 whether the video further elaborated on that.
10 Do you think there needs to be any elaboration
11 as to that statement?

12 **A.** No, I do not.

13 **MR. CAMPBELL:** I don't have
14 further questions.

15 **MR. FELDMAN:** Anything further of
16 this witness?

17 **MS. GRAGEL:** Yes.

18 **RECROSS-EXAMINATION**

19 **BY MS. GRAGEL:**

20 **Q.** Did you have a best friend during your
21 life?

22 **A.** Yes.

23 **Q.** Did you ever have an argument with your
24 best friend?

25 **A.** Yes.

1 Q. I take it you have family.

2 A. Yes.

3 Q. Did you ever have an argument with your
4 family?

5 A. Yes.

6 Q. It's not unusual in the course of
7 friendships, family or workplaces to have
8 disagreements with people, is it?

9 A. Okay.

10 Q. And that happens on construction sites all
11 the time, correct? People disagree?

12 A. I don't know if I can answer the question.

13 MR. FELDMAN: Next question.

14 BY MS. GRAGEL:

15 Q. You were asked some questions about the
16 investigation that led to Mr. Harting's removal.

17 Did University Hospitals ever inquire of
18 you as part of that investigation about
19 Mr. Harting's overall performance as a laborer
20 at the workplace?

21 A. No, they did not.

22 Q. Did anyone ask you that question prior to
23 this arbitration?

24 A. No.

25 MS. GRAGEL: Nothing further.

1 **MR. CAMPBELL:** May I?

2 **MR. FELDMAN:** Go ahead.

3 FURTHER REDIRECT EXAMINATION

4 **BY MR. CAMPBELL:**

5 **Q.** Ever in your arguments with your best
6 friend, ever call your best friend a "nigger" in
7 front of others as a derogatory term?

8 **A.** I have not.

9 **Q.** Do you think that's appropriate in the
10 workplace to call one of the owner's employees a
11 "nigger"?

12 **A.** I do not think it's appropriate.

13 **Q.** Do you think it's appropriate for one of
14 the tradesmen to call a UH employee, one of the
15 owner's employees a thief in front of others?

16 **A.** No.

17 **Q.** Is there a means for these union tradesmen
18 to bring disputes to your attention if they have
19 issues?

20 **A.** Yes.

21 **MR. CAMPBELL:** I don't have any
22 further questions.

23 **MR. FELDMAN:** Next witness.

24 **MR. CAMPBELL:** I just want to
25 verify, I'd like to call Mr. Harting on cross.

1 I'm assuming if he's called in his case, I can
2 cross-examine him based on direct testimony. I
3 just have a couple quick questions for him in
4 our case.

5 **MR. FELDMAN:** You may call him on
6 cross.

7 **MR. CAMPBELL:** I just want to
8 verify if he's called in the union's case, that
9 I'm permitted to cross him on the direct
10 examination from the union.

11 **MR. FELDMAN:** Do you have any
12 objection?

13 **MS. GRAGEL:** I'm sorry, I still
14 didn't hear.

15 **MR. FELDMAN:** He wants to call
16 the grievant now.

17 **MR. CAMPBELL:** I have a few facts.
18 I just want to verify the process is not going
19 to preclude me from cross-examining him in your
20 case.

21 **MS. GRAGEL:** Now I understand
22 the question.

23 **MR. CAMPBELL:** I just a few
24 questions for Mr. Harting.

25 **MR. FELDMAN:** Let me just ask you

1 something. This could lead to a couple of
2 hours.

3 **MR. CAMPBELL:** No. I really only
4 have a few questions for him at this time. I'm
5 not going to go long with this, I just want to
6 verify --

7 **MIKE HARTING**
8 of lawful age, a witness herein, was examined
9 and testified as follows:

10 **MR. FELDMAN:** For the record,
11 state your name.

12 **MR. HARTING:** Mike Harting.

13 **MR. FELDMAN:** M-i-k-e?

14 **MR. HARTING:** M-i-k-e. I'm
15 getting all nervous here.

16 **MR. FELDMAN:** Just sit back and
17 relax. I don't bite. How do you spell your
18 last name?

19 **MR. HARTING:** H-a-r-t-i-n-g.

20 **MR. FELDMAN:** Do you understand,
21 Mr. Harting, you're under oath?

22 **MR. HARTING:** Yes, I do.

23 **MR. FELDMAN:** You may inquire.

24 **CROSS-EXAMINATION**

25 **BY MR. CAMPBELL:**

1 **Q.** I have a few questions for Mr. Harting at
2 this time.

3 Mr. Harting, just to verify, I think we've
4 heard Rivera Construction was your employer.

5 **A.** Yes, he was.

6 **Q.** Are you still a laborer today?

7 **A.** Yes, I am.

8 **Q.** I'm assuming that you still maintain your
9 seniority within the laborer union?

10 **A.** Yes, I do.

11 **Q.** Are you working on a construction site
12 today?

13 **A.** Yes, I am.

14 **Q.** And when did you begin working on a
15 construction site after -- let me ask you this
16 just so the record is clear. I believe we've
17 said February 2nd, 2009 is when you were
18 excluded from the UH site.

19 **A.** Yes.

20 **Q.** Is that -- let me finish the question. I
21 know that you're nervous, but I want the record
22 to be clean.

23 Is that, to the best of your recollection,
24 the date you were excluded?

25 **A.** Yes, it was.

1 Q. Now, at that point you were always free to
2 continue working for Laborers Local 310 on any
3 site outside of UH property, correct?

4 A. Yes, I was.

5 Q. And when did you get assigned to the next
6 work site?

7 A. Probably about a month.

8 Q. So it would be about March 2009?

9 A. Yes.

10 Q. And I'm assuming your union representative
11 who's here today could verify when you actually
12 went to a work site?

13 A. Yes.

14 Q. Your wages regardless whether you're on the
15 UH site or another site with a different owner
16 are governed by your union contract with Local
17 310, correct?

18 A. Yes.

19 Q. So you got paid the same rate of pay as you
20 would have been paid if you were working at UH?

21 A. Yes.

22 Q. What site have you been working on -- have
23 you been continuously since you obtained
24 additional work?

25 A. No, I haven't. I worked at the Perry

1 Nuclear Power Plant for four weeks or five
2 weeks, something like that, and then I just
3 started Monday at the Cleveland Institute of
4 Art.

5 Q. And, again, both of those two projects
6 you've been working as a laborer for Local 310?

7 A. Yes, I have.

8 Q. Same rate of pay you would have been
9 earning with UH?

10 A. Yes.

11 Q. On the UH projects?

12 A. Yes.

13 Q. So you don't know the exact date that you
14 started with the Perry Nuclear Power Plant?

15 A. No, I don't.

16 Q. How long of a break was there between your
17 Perry Nuclear Power Plant work and the Cleveland
18 Institute of, is it Art?

19 A. Cleveland Institute of Art, yeah. I would
20 say six weeks.

21 Q. Six weeks?

22 A. Yes.

23 Q. Now, how are the laborers from Local 310
24 assigned to projects, if you know?

25 A. We have a hiring list that once you get

1 laid off you go at the bottom of the list.

2 Q. Is it based on seniority?

3 A. It goes on wherever you show up on the
4 list. I think you have to work 15 days on a job
5 to be taken off the list, so you have to work
6 three weeks before going to back to the bottom
7 again.

8 Q. Did your local, Laborers 310, the grievant
9 in this matter, did they take any special steps
10 in order to get you a work assignment after
11 being excluded from UH?

12 A. No.

13 Q. So they just followed their same policies
14 and procedure?

15 A. Yes.

16 Q. Is that right?

17 A. Yes.

18 Q. Now, you never filed a grievance against
19 Rivera Construction?

20 A. No, I didn't.

21 Q. You did have a Collective Bargaining
22 Agreement that governed your employment with
23 Rivera, correct?

24 A. What was that?

25 Q. You had a Collective Bargaining Agreement

1 and union contract that governed between Local
2 310, the laborers and Rivera Construction?

3 **A.** I guess so.

4 **Q.** And it's your understanding, and we went
5 through at the last hearing, you did have a
6 grievance and arbitration procedure under that
7 contract?

8 **A.** Yes.

9 **Q.** Now, there's been a lot of questions about
10 the cafeteria, and I asked you at the last
11 arbitration, and you confirmed that you
12 understood, when you were on UH property you
13 were subject to the same rules and regulations
14 as any other visitor to the property, correct?

15 **A.** Yes.

16 **Q.** That meant if UH prohibited racial
17 comments, you understood that you should not be
18 using racial comments on the property?

19 **A.** Yes, without a doubt.

20 **Q.** And you understand that the use of the term
21 "nigger" would be inappropriate?

22 **A.** Very inappropriate, I know that.

23 **Q.** You understood that fighting would be
24 inappropriate?

25 **A.** Uh-huh.

1 Q. Right?

2 A. Yes.

3 Q. And that's any work site.

4 A. Yes.

5 Q. These things aren't specific to UH, this is
6 what Local 310 teaches you, right?

7 A. What, that --

8 Q. Your union teaches you when you go on the
9 work site to be courteous, be professional?

10 A. You're to act like a gentleman.

11 Q. And there's no difference between acting
12 like a gentleman and treating the owners,
13 employees and others on the work site like your
14 best friend or family, correct?

15 A. Yes. But when -- when people steal from
16 you, that crosses the line.

17 Q. I'm not asking you about that now. I just
18 want to verify that, we were asked a lot of
19 questions, Mr. Gerber, about whether you were
20 aware of these policies and procedures. Your
21 union who is here today told you to act like a
22 gentleman at all work sites.

23 A. Yeah --

24 Q. Just answer the question. Your union told
25 you to act like a gentleman on all work sites.

1 **A.** Yes.

2 **Q.** You understood you were to act like a
3 gentleman on the UH work sites, right?

4 **A.** Yes.

5 **Q.** And you understand that if your union
6 believed that you weren't acting like a
7 gentleman on that work site that they could have
8 excluded you themselves, correct?

9 **MS. GRAGEL:** Objection.

10 **MR. FELDMAN:** What's the
11 objection?

12 **MS. GRAGEL:** I don't know of any
13 labor law or contract that says the union can
14 exclude anybody from work. That's a legal and
15 contractual --

16 **MR. FELDMAN:** If the grievant
17 knows, he may answer. If he doesn't know, he
18 may say so.

19 **BY MR. CAMPBELL:**

20 **Q.** My question is, if your union -- you have
21 your union representatives here, one of your
22 reps. If Terry Joyce or John Gilbane, John is
23 the president of the local, correct?

24 **A.** Business agent.

25 **Q.** If John believed you were not acting like a

1 gentleman on the project, he could have told you
2 we're going to reassign you?

3 **A.** Yes.

4 **Q.** You knew full well, regardless of any
5 Gilbane Safety Plan or UH policy and procedure
6 that you had a code of conduct when you were on
7 the work site?

8 **A.** Yes.

9 **Q.** That was applicable to the Perry Nuclear
10 Power Plant, the Cleveland Institute of Art or
11 UH, right?

12 **A.** Right.

13 **Q.** And you agree and acknowledge that if UH
14 believed you used racial terms towards an
15 employee, that that's appropriate to exclude you
16 from the site?

17 **MS. GRAGEL:** Objection.

18 **BY MR. CAMPBELL:**

19 **Q.** I'm not asking you to concede you did it,
20 but if UH believed you did it, that would be
21 appropriate to say, "Hey, we're going to exclude
22 him."

23 **MS. GRAGEL:** Objection. And the
24 basis of the objection, and this gets to the
25 heart of the grievance, it's a question for the

1 arbitrator to interpret the Project Labor
2 Agreement and the attachments to it, and asking
3 the individual to draw a question of contract
4 interpretation is inappropriate.

5 **MR. FELDMAN:** All right. Go to
6 the next question.

7 **BY MR. CAMPBELL:**

8 **Q.** And you would agree that calling an owner's
9 employee a thief in front of others would be
10 inappropriate?

11 **A.** No.

12 **Q.** You don't think so?

13 **A.** No. When it happens to you, it's not
14 inappropriate, you call the shot --

15 **Q.** There were others in the cafeteria with
16 you, right?

17 **A.** Yes.

18 **Q.** There were people that were both union
19 brothers as well as nonunion brothers?

20 **A.** Yes.

21 **Q.** It was busy?

22 **A.** A little, yeah.

23 **Q.** There was a line, right?

24 **A.** Yes.

25 **Q.** You freely called her a thief in front of

1 all those people?

2 **A.** Yes.

3 **Q.** You cussed?

4 **A.** Yes.

5 **Q.** And you got angry?

6 **A.** Not really. You don't know me angry.
7 Because of my size, if I say something,
8 everybody says he's angry. I'm a gentleman.

9 **Q.** You're a large man?

10 **A.** Yes.

11 **Q.** And you can be intimidating?

12 **A.** Yes.

13 **Q.** And you wouldn't doubt that if we hear
14 Ms. Hanson come in and say she was intimidated
15 by you and others said that, you wouldn't have
16 any reason to disagree with that?

17 **MS. GRAGEL:** Objection.

18 **MR. HARTING:** I did not make an
19 aggressive move or anything.

20 **BY MR. CAMPBELL:**

21 **Q.** Let's just verify what you did. You raised
22 your voice?

23 **A.** Okay.

24 **Q.** Right?

25 **A.** Yes.

1 Q. You cussed?

2 A. Yes.

3 Q. You called her a thief in front of others?

4 A. Yes.

5 Q. You deny you called her a nigger?

6 A. Yes.

7 Q. And you continued to call her a thief even
8 after they gave you a --

9 A. As I was talking to the manager, I said,
10 "She's a thief and she's stealing from me."

11 Q. You told him that she was a "fucking
12 thief," right?

13 A. No, I didn't.

14 Q. You deny "fucking" but you said "thief"?

15 A. I don't quite remember, but, you know, I
16 really don't talk like that. So if I said it, I
17 had to really be aggravated or it just slipped
18 because I -- like I said, I'm --

19 Q. You understood that if you thought that she
20 had taken money, there were ways to handle that
21 issue, right?

22 A. No, not really.

23 Q. Do you think it would be appropriate if
24 Rivera manager or Gilbane employee came over and
25 watched you do your work and they called you a

1 thief in front of your co-workers without having
2 a basis for it?

3 **A.** The thing is when you're in a situation
4 where I am like you could come look at me any
5 time you want and you're going to find out that
6 I'm not.

7 **Q.** Would you appreciate it if a Gilbane
8 employee came over and called you a thief in
9 front of all your union brothers?

10 **A.** They have.

11 **Q.** You didn't like it?

12 **A.** No.

13 **Q.** Did you file a grievance?

14 **A.** No.

15 **Q.** You told your union about it, right?

16 **A.** No. Usually just -- that's life in the
17 construction trade.

18 **Q.** But you think it's appropriate and
19 gentlemanly to call somebody a thief in front of
20 others?

21 **A.** When it happens to you, yes.

22 **Q.** So you're standing by that you think your
23 conduct was gentlemanly when you called her a
24 thief?

25 **A.** I did not -- I said what I had to say; I

1 turned and I went and ate.

2 Q. You said what you had to say. You called
3 her a thief numerous times in front of others,
4 right?

5 A. I don't know if -- I know I said it at
6 least once, but I don't --

7 Q. You told her supervisor she was a thief?

8 A. Yes, when we were sitting down at a table.

9 Q. Not just one supervisor, many supervisors?

10 A. Yes.

11 Q. Told her employer that she was a thief?

12 A. Yes.

13 Q. And you told people that you had no idea
14 who they were, whether they were UH employees or
15 visitors or patients?

16 A. Well, people asked me what was going on and
17 I would tell them. I said, "She's stealing
18 money from me." Down there, they steal money
19 from everybody.

20 Q. So you're saying you've been there a number
21 of times in the cafeteria?

22 A. Yes.

23 Q. And you think there was a number of thefts?

24 A. There's certain ways to do it, but, yeah.

25 Q. Why did you go back? You think there's a

1 theft, so why go back to the cafeteria over and
2 over?

3 A. Because it's the only place around there to
4 eat that's clean.

5 Q. You obviously knew that there were
6 supervisors on duty, right?

7 A. Cafeteria supervisors?

8 Q. Yes.

9 A. Yeah.

10 Q. Why not step over and say, "Sir, ma'am, I
11 think I've been shortchanged"?

12 A. I didn't think anything would have been
13 accomplished by that.

14 Q. Why not do it instead of calling somebody
15 out in front of the public?

16 A. Because she stole money from me right then.
17 If I steal money from you right then, what are
18 you going to say?

19 Q. You understood that there were processes,
20 you could have told Gilbane, you could have told
21 Rivera, you could have told your union, correct?

22 A. My union has nothing to do with it.
23 Gilbane has nothing to do with it. It was an
24 isolated incident between two people.

25 Q. Now, if the UH representatives and the

1 cafeteria representatives testify they will
2 exclude anybody regardless whether a union
3 employee or not, based on your conduct, you
4 would agree that those same rules are applicable
5 to you, correct?

6 MS. GRAGEL: Objection.

7 MR. FELDMAN: That's a
8 determination I'll make.

9 MR. CAMPBELL: He's already
10 testified the same rules are applicable to him.

11 MR. FELDMAN: Then why ask it
12 again?

13 BY MR. CAMPBELL:

14 Q. You had an employee badge?

15 A. Yes, I did, sir.

16 Q. And you, I'm assuming, followed all the
17 procedure to get that employee badge?

18 A. Yes. But in our meeting there was no --

19 MR. FELDMAN: There's nothing
20 before you.

21 MR. CAMPBELL: Just one second.
22 Subject to cross-examination in the union's case
23 if he's called on direct, I don't have any
24 questions at this time.

25 MS. GRAGEL: And I'll defer

1 my --

2 MR. FELDMAN: Your direct
3 testimony?

4 MS. GRAGEL: Cross on this
5 subject or recross until I put him on my case.

6 MR. FELDMAN: You may have a
7 seat. It's now five to 12:00. Do you want to
8 take time off for lunch? This case is going to
9 go on for a long time.

10 MR. CAMPBELL: Here's my only
11 issues. Lattisia Hanson is here. She is on
12 vacation and she is coming out of vacation in
13 order to testify.

14 MR. FELDMAN: We're going to take
15 lunch. I used to work like a horse when I was
16 young.

17 MR. CAMPBELL: I just want to be
18 able to tell her that I did my best to get her
19 up to testify.

20 MR. FELDMAN: You tell her that
21 I'm the bad guy.

22 MS. GRAGEL: Can we talk a
23 little bit about how you think the day is going
24 to go after lunch?

25 MR. FELDMAN: You're going to

1 work until 4:00 or 5:00 and that's going to be
2 the end of it.

3 **MS. GRAGEL:** And then if we
4 don't finish, which is sort of --

5 **MR. FELDMAN:** We'll figure out
6 another day.

7 **MS. GRAGEL:** If we need to --
8 does tomorrow make sense?

9 **MR. CAMPBELL:** I have to fly to
10 Boston at 6:00 a.m. tomorrow, Providence, Rhode
11 Island. I would expect that unless
12 cross-examination goes long, I think at this
13 point I have witnesses who are discreet and
14 don't think they're going to be long.

15 **MR. FELDMAN:** Okay. Whatever
16 they take, they take. We'll have to decide on
17 future time when it arises. Right now we'll
18 adjourn for one hour and start working this
19 afternoon.

20 (Thereupon, a luncheon recess was
21 taken at 12:00 p.m., with the
22 proceedings to be continued at 1:00
23 p.m.)

24
25

1 AFTERNOON SESSION

2 1:05 p.m.

3 LATTISIA HANSON

4 of lawful age, a witness herein, was examined
5 and testified as follows:

6 MR. FELDMAN: May I have your
7 name, please?

8 MS. HANSON: Lattisia Hanson.

9 MR. FELDMAN: Spell that.

10 MS. HANSON: L-a-t-t-i-s-i-a
11 H-a-n-s-o-n.

12 MR. FELDMAN: Do you understand
13 that you're under oath?

14 MS. HANSON: Yes, I do.

15 DIRECT EXAMINATION

16 BY MR. CAMPBELL:

17 Q. Ms. Hanson, thank you for coming today.
18 Are you currently employed?

19 A. Yes, I am.

20 Q. Who is your employer?

21 A. University Hospitals.

22 Q. And what is your position?

23 A. Cashier.

24 Q. And how long have you held that position?

25 A. About eight months probably, something like

1 that.

2 **Q.** How long have you been employed by
3 University Hospitals?

4 **A.** I've been employed a year, and I was a temp
5 for about a year, so two years total.

6 **Q.** And have you worked in the same location of
7 University Hospitals throughout your temporary
8 status and employment?

9 **A.** Yes, sir.

10 **MR. FELDMAN:** Excuse me. I'm
11 confused. You've been a cashier for eight
12 months?

13 **MS. HANSON:** About eight months,
14 yes, sir.

15 **MR. FELDMAN:** And you have two
16 years longevity or seniority at the hospital?

17 **MS. HANSON:** Yes. I worked as a
18 temp for six months and the rest was my
19 employment, but I've only been a cashier for
20 eight months.

21 **MR. FELDMAN:** The question was
22 asked, as I understand it, how long have you
23 worked at the same area.

24 **MR. CAMPBELL:** Yes. My question
25 was, and I'll get into the positions she held

1 before cashier, but my question was as a temp
2 and as an employee, what area of University
3 Hospitals have you been assigned, and she said
4 in the cafeteria of the main campus.

5 **MR. FELDMAN:** Okay.

6 **BY MR. CAMPBELL:**

7 **Q.** What position did you hold before cashier?

8 **A.** Nutrition assistant.

9 **Q.** And nutrition assistant was also in the
10 cafeteria at the main campus?

11 **A.** Yes.

12 **Q.** Just so the record is clear, the main
13 campus, where is that located?

14 **A.** On Euclid.

15 **Q.** In Cleveland, Ohio?

16 **A.** Yeah, Cleveland, Ohio inside University
17 Hospitals.

18 **Q.** And the main cafeteria there next to
19 Rainbow and all the other hospitals?

20 **A.** Yes.

21 **Q.** Just so it's easier for the court reporter,
22 let me just finish the question and then you
23 answer so she can get the question.

24 **MR. FELDMAN:** She takes down
25 everything you say on her little machine. So

1 shaking heads and talking while somebody else is
2 talking isn't going to cut it. You follow me?

3 **MS. HANSON:** I got you.

4 **MR. CAMPBELL:** Thank you.

5 **BY MR. CAMPBELL:**

6 **Q.** Now, were you supposed to be on vacation
7 today?

8 **A.** Yes.

9 **Q.** And you've come here to testify and left
10 your grandchildren today to testify?

11 **A.** Yes.

12 **Q.** Now, let me just ask you about University
13 Hospitals. Is the cafeteria quite large where
14 you work?

15 **A.** Yes.

16 **Q.** And what shift were you working in January
17 2009?

18 **A.** Third shift.

19 **Q.** How long have you been on the third shift?

20 **A.** A year.

21 **Q.** One year?

22 **A.** Yes.

23 **Q.** And just so the record is clear, what time
24 does third shift begin and end?

25 **A.** 6:00 p.m.

1 Q. What time does it end?

2 A. 2:00 a.m.

3 Q. Now, in the cafeteria do you have patients
4 sometimes come down?

5 A. Yes.

6 Q. Do you have employees of University
7 Hospitals come through?

8 A. Yes.

9 Q. And you have visitors?

10 A. Yes.

11 Q. And your shift when you're working the
12 third shift beginning at 6:00, are there times
13 when it's very busy?

14 A. Yes.

15 Q. Let me ask you before we move on from the
16 general, who is your supervisor?

17 A. Andrew Powell.

18 MS. GRAGEL: Andrew --

19 MR. CAMPBELL: Powell, P-o-w-e-l, I
20 believe.

21 BY MR. CAMPBELL:

22 Q. Is Andrew an employee of University
23 Hospitals or Sodexho?

24 A. Sodexho.

25 Q. What is your understanding of Sodexho's

1 role, if you know, at the hospital?

2 **A.** Would you repeat that for me?

3 **Q.** What is your understanding, if you know, of
4 Sodexho's role at University Hospitals? What
5 does Sodexho do?

6 **A.** I think they do a lot of management.
7 That's about all I know.

8 **Q.** Does Sodexho run the cafeteria at the main
9 campus?

10 **A.** I think so.

11 **Q.** But you're a University Hospitals employee?

12 **A.** Yes, I am.

13 (Thereupon, Respondent's Exhibit 2
14 was marked for purposes of
15 identification.)

16 **BY MR. CAMPBELL:**

17 **Q.** Ms. Hanson, I've handed you what's been
18 marked as Respondent's Exhibit 2. Have you seen
19 this document before today?

20 **A.** Yes.

21 **Q.** And what is it?

22 **A.** It's a statement that I wrote.

23 **Q.** This is your handwriting?

24 **A.** Yes, it is.

25 **Q.** And did you have a chance to read through

1 it recently?

2 A. Yes.

3 Q. Is it true and correct to the best of your
4 knowledge?

5 A. Uh-huh.

6 Q. Who asked you to write that statement?

7 A. One of the managers, Heather, asked me to
8 write it.

9 Q. One of your managers?

10 A. Yes.

11 Q. And did this take place after the incident
12 that I'm going to ask you about between you and
13 the construction worker?

14 A. It took place after, yes.

15 Q. Now, just to verify the time, I see on here
16 that -- do you know the date that this incident
17 took place based on your written statements,
18 when the incident at the cash register took
19 place?

20 A. On the 27th, January 27th.

21 Q. 2009?

22 A. 2009.

23 Q. I just want to ask you, to the best of your
24 ability, and if you need to refer to your
25 statement, that's fine, but I want to ask you,

1 can you tell us what happened in your own words
2 that night as to the construction worker and
3 what happened?

4 **A.** The gentlemen came through the line, and I
5 rang up his transaction and he handed me six
6 dollars, one dollar and a five dollar bill. And
7 I cashed him out and gave him back 20 cents in
8 change. And he said to me, "I gave you ten
9 dollars."

10 And I went, "No, sir, you gave me six
11 dollars."

12 He went, "I gave you f-ing ten."

13 I said, "No, sir."

14 He was like, "You're going to give me my
15 f-ing money."

16 **Q.** When you say "f-ing," just so I
17 understand -- and I understand that you may not
18 usually use these terms. Are you using the term
19 "fucking"?

20 **A.** Yes.

21 **Q.** I know it might be difficult, but if you
22 could use as best as you can his words because
23 those are what the arbitrator is going to be
24 looking at.

25 **MR. FELDMAN:** He's implying I'm a

1 bad guy.

2 MS. HANSON: Excuse me?

3 BY MR. CAMPBELL:

4 Q. And I'll point it out if you don't. If you
5 don't want to use the language, that's fine, but
6 I'll point it out. I just need to do that for
7 the record. That's what the issue is. I'm
8 sorry to cut you off.

9 A. So because he was kind of leaning and he
10 looked very angry, I said to him, "I see I'm
11 going to have to get my manager."

12 And he said, "That's right, you go get your
13 fucking manager."

14 So as I got ready to go to get my manager,
15 my manager was already coming across the
16 cafeteria anyway.

17 Q. Let me stop you there and ask you a
18 question. Were there others in the area aside
19 from you and the construction worker?

20 A. Yes. The line was very long.

21 Q. Could others overhear what the two of you
22 were saying?

23 MS. GRAGEL: Objection.

24 MS. HANSON: Yes.

25

1 **BY MR. CAMPBELL:**

2 **Q.** Do you think others could overhear what was
3 being said?

4 **A.** Yes.

5 **Q.** Was it loud or --

6 **A.** It was very loud.

7 **Q.** And do you recall specifically telling the
8 gentleman that you were going to get your
9 manager?

10 **A.** Yes.

11 **Q.** So he knew that you were taking it to the
12 next step?

13 **A.** Yes.

14 **Q.** I'm sorry to cut you off. Go on.

15 **A.** So he told me, "That's what you do, you go
16 get your fucking manager," but Andrew was
17 already coming towards us.

18 **Q.** Just so the record -- Andrew, what's his
19 last name?

20 **A.** Powel.

21 **Q.** Your manager?

22 **A.** My manager. So when he gets to my
23 register, I started out going to explain to
24 Andrew what happened, but the guy, he was
25 ranting and raving so I just stopped and I

1 figure I'll let him go ahead on and say what he
2 had to say. So he was saying to Andrew, "I gave
3 her a ten dollar bill; she gave me 20 cents.
4 She's not going to take my fucking money."

5 Q. He was talking to Andrew. Was it loud
6 enough that others could hear?

7 MS. GRAGEL: Objection.

8 MS. HANSON: Yes.

9 MR. FELDMAN: If she knows.

10 BY MR. CAMPBELL:

11 Q. Were you part of the conversation between
12 him and Andrew?

13 A. Yes, I was. They were still standing at my
14 register.

15 Q. Was the gentleman angry?

16 A. Very angry. So he says, "You going to give
17 me my fucking money." So I'm not -- with my
18 manager standing there, I'm not dealing with him
19 at all right now, I'm just kind of just sitting
20 there. So Andrew is trying to tell him, you
21 know, to just calm down, quiet down.

22 He was like, "No, she's a fucking thief and
23 she's not going to take my fucking money."

24 Q. Was that loud enough others you think could
25 hear?

1 **A.** Most definitely. And then he was like,
2 "Well, sir, we're going to look at the cameras,
3 and if the cameras show that she was wrong, I'll
4 most gladly give it back."

5 He was like, "No, you're going to give me
6 my mother-fucking money now. She's not going to
7 take my fucking money, fucking thief. That
8 nigger ain't going to get my money."

9 **Q.** Just so the record is clear, did he
10 actually use the term "nigger"?

11 **A.** "Nigger. A fucking thief. That nigger
12 ain't going to take my money."

13 And Andrew said, "Come on, sir, I think we
14 should step out of the line," and at that point
15 they walked away. I don't know what happened
16 once they left my line, and I just went on to
17 take care of the rest of my customers.

18 **Q.** Did you see this individual come back in to
19 the cafeteria again after that?

20 **A.** He came back I think it was a couple days
21 later; something like that and he came back
22 through the line, but he didn't say anything to
23 me, I didn't say anything to him, he dealt with
24 my manager.

25 **Q.** Did you ever tell your manager about the

1 use of the term "nigger" and the cussing?

2 A. After it happened?

3 Q. Yes.

4 A. Yes, we discussed it.

5 Q. And do you know Ms. Peplowski sitting next
6 to me?

7 A. Yes, I do.

8 Q. Did she ever talk to you about that?

9 A. At that time it happened, I did not report
10 it, no.

11 Q. Did you report it after that night?

12 A. Yes, I did.

13 Q. And who did you report it to?

14 A. I wrote this statement and gave it to
15 Heather.

16 Q. Is Heather one of your supervisors?

17 A. One of the other managers.

18 Q. And that statement is true and correct?

19 A. Yes.

20 Q. And everything you've told the arbitrator
21 here today to the best of your recollection is
22 true?

23 A. Yes.

24 Q. And during the investigation, you wrote
25 this -- these notes and you told University

1 Hospitals what you've told us here today?

2 **A.** Yes.

3 **MR. CAMPBELL:** I don't have any
4 further questions at this time. You will get
5 asked some questions by the union.

6 **MS. HANSON:** All right.

7 **MR. FELDMAN:** You may inquire.

8 CROSS-EXAMINATION

9 **BY MS. GRAGEL:**

10 **Q.** Ms. Hanson, my name is Susan Gragel, and I
11 represent Building and Construction Laborers
12 Local 310 and I have some questions for you.

13 Ma'am, you said that you've been working
14 for University Hospitals for is it a total of
15 about two years?

16 **A.** Yes, ma'am.

17 **Q.** And I wasn't clear. How much of that two
18 years was as a temporary employee?

19 **A.** Six months I believe it was. I had to do
20 six months temp.

21 **MR. FELDMAN:** It's what you know,
22 ma'am.

23 **MS. HANSON:** Six, seven months,
24 something like that.

25 **MR. FELDMAN:** You have to speak

1 up because we have a court reporter here that
2 has to listen to you. And the question is how
3 long have you served on a temporary basis, and
4 your answer is six or seven months?

5 **MS. HANSON:** Six or seven
6 months.

7 **BY MS. GRAGEL:**

8 **Q.** So we're in June of 2009, so you would have
9 started in about June of 2007 working for
10 University Hospitals? Does that sound about
11 right?

12 **A.** No. I think I started in November, so
13 would that have been eight months maybe?

14 **Q.** November 2007?

15 **A.** Yes.

16 **Q.** So about a year and a half you've worked
17 there?

18 **A.** Where? As a temp, as an employee?

19 **Q.** In total.

20 **A.** Two years.

21 **Q.** So you started temping in about June of
22 2007?

23 **A.** Okay.

24 **Q.** Does that make sense?

25 **A.** That makes sense.

1 Q. And when you worked as a temp, did you work
2 for the hospital or another agency?

3 A. For another agency.

4 Q. What agency was that?

5 A. Reserve Network.

6 Q. Reserve?

7 A. Network.

8 Q. When you were hired by Reserve Network as a
9 temporary employee for University Hospitals, was
10 that a full-time hire or part-time?

11 A. Full-time.

12 Q. About 40 hours a week then?

13 A. Forty hours a week, yes.

14 Q. And what was your assignment during the six
15 months that you were temping?

16 A. I worked in what we call Freshens.

17 Q. What is Freshens?

18 A. We make smoothies and serve ice cream.

19 Q. Is that like a little stand around the
20 atrium area of the hospital?

21 A. Yeah, it's inside of the cafeteria.

22 MR. FELDMAN: Freshen?

23 MS. HANSON: Freshens.

24 MR. FELDMAN: Do you know how to
25 spell it?

1 **MS. HANSON:** F-r-e-s-h-e-n.

2 **MR. CAMPBELL:** It's the name of a
3 smoothie company. They make like milkshakes.

4 **MR. FELDMAN:** Okay.

5 **BY MS. GRAGEL:**

6 **Q.** And when you did that work at the Freshen
7 stand, was that a day shift job or a different
8 shift?

9 **A.** That was day shift.

10 **Q.** And what's day shift as you know it at the
11 hospital?

12 **A.** 6:00 a.m. to 2:00, six to two.

13 **Q.** What kind of work had you done before you
14 became a temp at University Hospitals?

15 **A.** I worked in Mentor as a machine operator.

16 **Q.** When did you do that work, ma'am?

17 **A.** I worked there for six years prior to the
18 agency, going to the agency.

19 **Q.** And was there a gap between your work as a
20 machinist and starting at the agency, or did you
21 go right from one job to the other?

22 **A.** No, it was a gap. It was like maybe an
23 eight-month gap.

24 **Q.** And an eight-month gap?

25 **A.** Yeah, because I drew unemployment.

1 Q. And you had been laid off from your work as
2 a machinist?

3 A. Yes.

4 Q. And so then after your six months as a
5 temp, then you became a regular employee of
6 University Hospitals, correct?

7 A. Correct.

8 Q. Do you know how it was that you went to
9 work for University Hospitals rather than
10 Sodexho?

11 A. No, I don't. Because I'm thinking that
12 Sodexho mostly are managers, they're management.

13 Q. When you started to work then as a regular
14 full-time -- it was full-time when you went off
15 temp to go to University Hospitals?

16 A. Yes.

17 Q. Did you stay day shift or did you get a
18 different shift?

19 A. I got a different shift.

20 Q. And what was that shift?

21 A. That was nights.

22 Q. 6:00 p.m. to 2:00 p.m. shift?

23 A. Yes, ma'am.

24 Q. And was that Monday to Friday?

25 A. Monday to Friday because I couldn't work

1 weekends.

2 Q. And once you got full-time work, did you
3 get benefits through University Hospitals?

4 A. Yes.

5 Q. And you are not in a union?

6 A. No.

7 Q. When you became a regular full-time
8 employee of University Hospitals, did you
9 immediately become a cashier, or did you do some
10 other kind of work in the food service area?

11 A. I did some other kind of work.

12 Q. And how did you come to be assigned to work
13 as a cashier? Was that a promotion or just a
14 change of assignment?

15 A. It was a change of assignment.

16 Q. Did you receive any training when you moved
17 out of food prep into the cashier job?

18 A. Yes, I did.

19 Q. What kind of training did you get?

20 A. They do like hands-on training, other
21 cashiers train us, managers train us.

22 Q. And did you receive training in customer
23 service about how to deal with customers who
24 were making complaints?

25 A. All of that come in the training.

1 **Q.** And would it be fair to say that during
2 your training you were informed that you would
3 receive complaints from time to time because
4 that's part of being in customer service?

5 **A.** Oh, yeah.

6 **Q.** And were you trained with that old rule
7 that the customer is always right?

8 **A.** Uh-huh.

9 **Q.** That's true?

10 **A.** That's true.

11 **Q.** And were you also trained that accuracy is
12 important in doing the cashier's work?

13 **A.** Exactly.

14 **Q.** Was the job that you did the subject of the
15 kind of rules that I've seen at other food
16 service places, that if your drawer is off for a
17 certain number of times, you can be disciplined?

18 **A.** That's right.

19 **Q.** What's the rule where you work?

20 **A.** If your drawer is off \$25 over or under,
21 they take disciplinary action.

22 **Q.** And do you get a warning before discipline,
23 or is there some process for that?

24 **A.** You do get a write-up, and after so many
25 write-ups --

1 **MR. FELDMAN:** What's the
2 second -- after you get a write-up, what's next?

3 **MS. HANSON:** I believe. I'm not
4 sure. I believe it's termination.

5 **MR. FELDMAN:** After a write-up
6 you get termination?

7 **MS. HANSON:** I believe so.

8 **BY MS. GRAGEL:**

9 **Q.** So step one is write-up and second
10 violation is termination?

11 **A.** Well, there are some steps that are taken.

12 **Q.** And had you received any warnings or
13 write-ups before this incident about your
14 handling of cash?

15 **A.** No.

16 **Q.** And you didn't want to get a write-up
17 either, correct?

18 **A.** No.

19 **Q.** And if your drawer is off, short, do you
20 have to come out-of-pocket to make up the
21 difference?

22 **A.** No.

23 **Q.** You have in your hand the notes that
24 Mr. Campbell asked you to look at marked as
25 Respondent's Exhibit 2.

1 **A.** Yes.

2 **Q.** And this is dated January 29, 2008 --
3 crossed out January 28, 2009. You did what
4 everybody does in January, think of the wrong
5 year.

6 There's a note there about camera footage,
7 and what are those numbers? First of all, what
8 numbers did you write down, "7 colon"?

9 **MR. CAMPBELL:** If that's your
10 writing.

11 **MS. HANSON:** It's not.

12 **BY MS. GRAGEL:**

13 **Q.** I think you said, or it's in your notes
14 here, that somebody said that they would check a
15 camera and find out if you were right or if
16 Mr. Harting was right about the change.

17 What camera are we talking about?

18 **A.** We have cameras in the cafeteria up over
19 each cash register, and they are able -- they
20 zoom right down on our drawers and all of our
21 transactions.

22 **Q.** Have you seen the camera footage from
23 January 27, 2009?

24 **A.** Yes.

25 **Q.** And that camera footage, does it basically

1 just show your drawer or does it show anything
2 going on around you?

3 A. It shows everything going on around you.

4 Q. Does it show your face?

5 A. It showed -- did it show my face? I'm not
6 sure.

7 Q. Is there sound?

8 A. I'm not sure.

9 Q. Did you ever hear any audiotape of this
10 incident?

11 A. I've never heard the audiotape.

12 Q. Now, in the cafeteria, changing gears a
13 little bit here, when you are working the cash
14 register, you are sitting behind a counter where
15 people bring their food up to the register,
16 correct?

17 A. Yes.

18 Q. And there's -- in the place where you work
19 is there also shelving as you move down the line
20 to get to the cash register where there are some
21 food items that you can pick up?

22 A. Yes.

23 Q. In fact, when you sit as a cashier, you're
24 completely surrounded, are you not?

25 A. Yes.

1 **Q.** There's a wall behind you so nobody can
2 walk up behind you --

3 **A.** True.

4 **Q.** -- and either get in the drawer or even
5 speak to you because it's got glass over it,
6 correct?

7 **A.** Right. There's two cashiers right next to
8 each other.

9 **Q.** You said that you usually worked the
10 6:00 p.m. to 2:00 a.m. shift, and you also said
11 that there are times when the cafeteria at
12 University Hospitals is busy during your shift.
13 Is that business usually at around 6:00, which
14 would be when you get to work and it's the usual
15 dinner hour?

16 **A.** Yeah, it can be.

17 **Q.** So it's not unusual for you to have a rush
18 like at 6:00?

19 **A.** It's not unusual.

20 **Q.** Is it also fair to say that the traffic in
21 the cafeteria coming through the cashier's line
22 drops off as the evening gets later?

23 **A.** Way later in the evening, yes.

24 **Q.** Is there a time when the cafeteria cashiers
25 close altogether before your shift ends?

1 **A.** No.

2 **Q.** You stay open for some items throughout the
3 night?

4 **A.** All night long.

5 **Q.** Do you recognize Mr. Harting here in this
6 room today?

7 **A.** Yes.

8 **Q.** And where is he seated?

9 **A.** Right there. (Indicating.)

10 **MR. CAMPBELL:** Let the record
11 reflect that she pointed to the grievant.

12 **MS. GRAGEL:** Thank you.

13 **BY MS. GRAGEL:**

14 **Q.** Before this incident on January 27th, 2009,
15 had you seen Mr. Harting in the cafeteria on
16 other days?

17 **A.** Not that I paid him any attention, no.

18 **Q.** And on the next day after the incident, did
19 Mr. Harting come through the line?

20 **A.** No, he didn't come the next day.

21 **Q.** Do you recall some day after this incident,
22 whether the next day or a later date, when he
23 came through the line, but you walked away so
24 that a manager could ring him out?

25 **A.** Will you repeat that, please?

1 Q. After the day that you later wrote up on
2 this piece of paper for the hospital, was there
3 a day when Mr. Harting came to the line, but you
4 walked out of your cashier area so that somebody
5 else could come in and ring him out?

6 A. That's not how it happened.

7 Q. So that's wrong?

8 A. That's not quite how it happened.

9 Q. How did it happen?

10 A. He came through my line, and when he came
11 through my line I was prepared to -- I rang all
12 of his stuff up, and my manager walked up on the
13 outer side of me and handed him a meal ticket
14 and said, "I told you I would take care of you."

15 And I went, "How can you do that? He'll
16 really feel like I actually stole his money.
17 He'll think that I'm guilty." I said, "So what
18 are you saying, I really am a thief and nigger,
19 you're going along with him," and my feelings
20 was hurt so I left out because I was crying.

21 MR. FELDMAN: So you left what?

22 MS. HANSON: So I left out
23 because I was crying.

24 MR. CAMPBELL: She left the cash
25 register.

1 **BY MS. GRAGEL:**

2 **Q.** Let me back up again. The day you did not
3 leave your cashier area, the manager came as you
4 testified, you took Mr. Harting away from your
5 counter and you continued to do your ringing up?

6 **MR. CAMPBELL:** Talking about the
7 day of the first incident?

8 **MS. GRAGEL:** On the day of the
9 incident.

10 **MS. HANSON:** Of the first
11 incident, yes.

12 **BY MS. GRAGEL:**

13 **Q.** So you kept ringing out?

14 **A.** Yes, stayed and kept ringing out.

15 **Q.** And didn't write up any complaints?

16 **A.** I didn't write up any complaint.

17 **Q.** And you talked to your manager there at the
18 counter?

19 **A.** Well, it had slowed down, and I went in the
20 cafeteria where my manager was standing and I
21 was talking to him, yes.

22 **Q.** On the 27th?

23 **A.** On the 27th.

24 **Q.** And would that have been the same -- in an
25 hour or much later in the shift?

1 **A.** Much later in the shift.

2 **Q.** Closer to 2:00 than 6:00?

3 **A.** About 10:00, 10:30.

4 **Q.** And he didn't tell you to write anything
5 up?

6 **A.** No.

7 **Q.** And then a day or so went by and you saw
8 that the manager gave some kind of coupon to
9 Mr. Harting?

10 **A.** Rewarded him I felt.

11 **Q.** And you felt then the company was taking
12 the customer's side against you?

13 **A.** Yes.

14 **Q.** And that upset you and you left your work
15 area?

16 **A.** I was offended. I felt offended.

17 **Q.** And that's when you then wrote up your
18 complaint?

19 **A.** I was asked to write it up. I was so
20 upset. They said, "Write it up" and I wrote it
21 up.

22 **MR. FELDMAN:** That's not the
23 write-up on this sheet here?

24 **MS. HANSON:** That's that.

25 **MR. FELDMAN:** That is the

1 write-up.

2 **MS. HANSON:** Yes, it is.

3 **BY MS. GRAGEL:**

4 **Q.** And you said "they said to write it up."
5 Did you call somebody or ask somebody's advice?

6 **A.** No. It was another manager -- when I got
7 to the back, once leaving out of the initial
8 cafeteria, I went in the back because I was very
9 upset. I was crying and the whole bit, so I was
10 just standing back there crying, and another
11 manager came in and wanted to know what was
12 wrong; and I was just telling her what had
13 happened, what had actually happened on the
14 27th, and then I told her what had just happened
15 a few minutes ago; and she said they had no
16 recollection of it, she was sorry and would I
17 write that up for her.

18 **Q.** And the person that you spoke with, do you
19 remember her name?

20 **A.** Heather.

21 **Q.** Do you know Heather's last name?

22 **A.** I don't know Heather's last name.

23 **Q.** Does Heather work for Sodexho?

24 **A.** She works for Sodexho, yes.

25 **Q.** And when you were writing -- you were

1 writing this document because Heather told you
2 to?

3 **A.** Yes.

4 **Q.** Is Heather Andrew's boss? Are they equals,
5 or don't you know?

6 **A.** I don't know. I think they're equals.

7 **Q.** And was that the first time that Heather
8 knew about the incident on January 27th when you
9 talked to her on January 29th?

10 **A.** I believe so, yes.

11 **Q.** As you were writing this up, did you talk
12 to Heather about what you should put down on
13 paper?

14 **A.** No.

15 **Q.** As you were writing this up, who did you
16 think was getting this document?

17 **A.** Heather.

18 **Q.** After you finished writing it up, did she
19 ask you any questions about it?

20 **A.** No.

21 **Q.** Did you go back to your cashier area where
22 you were working on the date that you wrote this
23 up to keep checking people out, or did you take
24 the rest of the evening off or do something
25 else?

1 **A.** I waited for a while and kind of consumed
2 myself, went in the bathroom and washed my face
3 and went back to work.

4 **Q.** So about how long did it take you to write
5 up this document, Respondent's Exhibit 2?

6 **A.** I'm not even sure.

7 **Q.** And as you're writing it up, did you talk
8 to anybody on the phone, your family?

9 **A.** No.

10 **MR. FELDMAN:** It turned out to be
11 a bad day at the office.

12 **MS. HANSON:** Very bad day at the
13 office, yes.

14 **BY MS. GRAGEL:**

15 **Q.** And then there was a time when you talked
16 to Ms. Peplowski from the hospital?

17 **A.** About?

18 **Q.** About what you put on paper?

19 **A.** No.

20 **Q.** Did anybody from University Hospitals ever
21 talk to you about what you put on paper?

22 **A.** Yes. They called me I think. I'm not
23 sure.

24 **Q.** When did somebody from the hospital talk to
25 you?

1 **A.** When the arbitration got called, they told
2 me.

3 **Q.** About how long was it after January 29th,
4 2009 that you talked to someone from University
5 Hospitals?

6 **A.** When was the last time we met down here?

7 **Q.** That would have been sometime in April?

8 **A.** Okay. Sometime in April.

9 **Q.** And before April had you talked to anybody
10 from University Hospitals?

11 **A.** I don't think so.

12 **Q.** Had you talked to anybody from --

13 **A.** I had talked to some other managers because
14 I remembered saying to them that I felt a little
15 uncomfortable being at the cash register because
16 I was afraid he would come back. And they were
17 saying that they had already dealt with the
18 situation and that he would not be coming back
19 into the cafeteria. That was the conversation.
20 That was it.

21 **Q.** And, first of all, when do you remember
22 that conversation taking place, right around
23 January 29 or much later?

24 **A.** Right around that time, somewhere around
25 that time.

1 Q. Within a few days or a week or so?

2 A. Yeah.

3 Q. And who did you talk with?

4 A. I talked to David Hawk.

5 Q. Can you spell that last name?

6 A. H-a-w-k.

7 MR. FELDMAN: He's from
8 University Hospitals?

9 MS. HANSON: He's a Sodexho
10 manager.

11 BY MS. GRAGEL:

12 Q. He's a Sodexho manager?

13 A. Yes.

14 Q. Do you remember talking to anyone else
15 besides Mr. Hawk?

16 A. No.

17 Q. And Mr. Hawk is the one that told you --

18 A. I didn't have to worry.

19 Q. Because the person wouldn't be coming back
20 into the cafeteria?

21 A. Right.

22 Q. In that large hospital area, do you know
23 that there are security cameras besides the one
24 that watches the transactions and the cash
25 drawer?

1 **A.** No. Those are the cameras, I think.

2 **Q.** I'd like you to look with me, ma'am, at the
3 security camera tape that the hospital has
4 provided me. I think it's the security camera
5 tape. It's the tape.

6 **MR. CAMPBELL:** Are we putting it
7 in as an exhibit, or what are we doing here?

8 **MS. GRAGEL:** Yes. I have it on
9 a jump drive or I could e-mail it to you. It's
10 the film that you e-mailed me.

11 **MR. CAMPBELL:** We'll see what it
12 is.

13 **MR. FELDMAN:** Do you want to
14 review it first?

15 **MR. CAMPBELL:** No. The witness
16 will review it. I'm going to assume -- she's
17 representing what I've given her.

18 **MR. FELDMAN:** I'm giving you the
19 opportunity --

20 **MR. CAMPBELL:** I'm going to
21 assume --

22 **MS. GRAGEL:** It is exactly --

23 **MR. FELDMAN:** Let the record show
24 that we were provided with a disk to reveal the
25 cafeteria area where the incident took place; is

1 that correct?

2 **MS. GRAGEL:** That is correct.

3 **MR. CAMPBELL:** And I think we all
4 agree there's no audio.

5 **MR. FELDMAN:** I want you to be
6 able to see this because you're going to be
7 asked questions.

8 Counsel, why don't you come and join
9 us? I want this to be done so that due
10 process -- so ask your question and make sure
11 you understand. It's not based only on the
12 question but on the video that you see, okay?

13 **MS. HANSON:** Okay.

14 **MR. FELDMAN:** First I'd like the
15 witness to identify the area as she sees and
16 then we'll go from there.

17 (Thereupon, the video was played.)

18 **BY MS. GRAGEL:**

19 **Q.** Ms. Hanson, this is a video from January
20 27th, 2009 that shows 15:33, which I'm not sure
21 if that's time of day or simply a timer on the
22 tape. It's something from January 27. And
23 before I hit the play button, is this you with
24 your back here in the area of the cashier?

25 **A.** Yes.

1 Q. And you testified that there are two
2 cashier stations side by side and I've got a
3 taller person standing. Is that your fellow
4 cashier?

5 A. Co-worker, yes.

6 Q. And when I asked you if there was a wall to
7 your back that had glass or some wood separating
8 you from the food area, I'm pointing here at a
9 glassed in area behind you. Is that what you
10 were thinking of when I asked you these
11 questions?

12 A. Yes.

13 Q. I see next to that area where the cashier
14 is the gate is pulled down for the aisle. Is
15 that usually the way it is in the evening shift,
16 it closes the walkway from one cashier area?

17 A. Yes.

18 Q. And only one, two, three -- only one is
19 open?

20 A. Yes.

21 Q. And then there are tables sitting on the
22 other side of this area?

23 A. Uh-huh.

24 Q. Do you know where the camera is?

25 A. No.

1 **Q.** This is different -- this is a different
2 kitchen than what you told me about?

3 **A.** Yes. Yes.

4 **Q.** It's a little jerky.

5 **MR. CAMPBELL:** I think the record
6 should reflect it's a time-lapsed video, it's
7 not real-time. It's missing moments. You
8 should describe that for the record.

9 **MS. GRAGEL:** You will notice
10 here that we're seeing jerky spots, that this
11 individual, for example, the last picture we
12 saw, he was standing here and then a picture
13 standing here because the camera takes picture
14 every few seconds. Is that a fair description?

15 **MR. CAMPBELL:** Yes. I wanted to
16 let the record reflect that we're not seeing
17 second by second, we are missing whatever amount
18 of time in between each photo.

19 **BY MS. GRAGEL:**

20 **Q.** I paused this here because there's a good
21 two or three customers. Do you recognize any of
22 these?

23 **A.** Right here? (Indicating.)

24 **Q.** Yes, ma'am.

25 **A.** No.

1 Q. Here standing is an individual with a white
2 T-shirt. I would represent to you at the time
3 of the picture that is Mr. Harting.

4 A. Okay.

5 Q. You testified, Mrs. Hanson, that there was
6 a line of people during the time that
7 Mr. Harting talked to you about the change. Do
8 you see anybody immediately in the line behind
9 him here?

10 A. I don't see anybody in this shot, no.

11 Q. Someone just came on to the camera here.
12 Do you know, was this person in your area, or is
13 he someone going on to a table?

14 A. I'm not sure.

15 Q. After Mr. Harting was in the line and
16 started the discussion about the change, did
17 anybody -- did you check out anybody while he
18 was standing there?

19 A. No.

20 Q. Did you let somebody jump the line?

21 A. I couldn't.

22 Q. You had to finish?

23 A. I had to make sure I dealt with him first.

24 Q. There's an individual standing here in a
25 dark -- is this your manager?

1 **A.** Let me see.

2 **MR. CAMPBELL:** She's shaking her
3 head no.

4 **MS. HANSON:** I can't see it.

5 **MR. FELDMAN:** Ma'am, you're going
6 to have to speak up.

7 **MS. HANSON:** Okay.

8 **BY MS. GRAGEL:**

9 **Q.** Clearly Mr. Harting is here. Do you see
10 him?

11 **A.** No.

12 **Q.** Mr. Harting is still there. Do you see the
13 white T-shirt?

14 **A.** No. I see the white T-shirt. I don't see
15 Mr. Harting, though.

16 **Q.** Do you see that?

17 **A.** I don't see Mr. Harting.

18 **Q.** You see the same man?

19 **A.** I see the same T-shirt.

20 **Q.** Another man there?

21 **A.** I don't see nobody. You can't really see
22 the faces. You can't see faces at all.

23 **MR. FELDMAN:** The angle is bad
24 and the lights are bad.

25

1 **BY MS. GRAGEL:**

2 **Q.** The individual there is standing?

3 **A.** I see somebody standing there. I see
4 somebody reached out like this, same person.
5 They're still reaching out like this at the
6 cashier, I see that.

7 **Q.** Now, there's another individual standing
8 there. Do you know if that's your manager?

9 **A.** What date is this?

10 **Q.** January 27th.

11 **A.** Is this person now at the cash register?

12 **Q.** I'm asking you that. Is there someone?

13 **A.** I really can't tell.

14 **Q.** Before I start this up again, these
15 individuals, these customers are sitting?

16 **A.** Exactly.

17 **Q.** Do you see them acting --

18 **A.** Huh-uh, but there was some people standing
19 here and I don't see them. (Indicating.)

20 **MR. CAMPBELL:** Let the record
21 reflect she's pointing behind the register.

22 **BY MS. GRAGEL:**

23 **Q.** People standing in the area behind the
24 gated aisle?

25 **A.** Right. It was a manager standing there --

1 Q. At the salad bar?

2 A. -- and I don't see him.

3 Q. We'll look again later.

4 This individual is here at the counter
5 having a discussion with you there or someone
6 else there.

7 MR. CAMPBELL: She's shaking her
8 head no.

9 BY MS. GRAGEL:

10 Q. You don't know what --

11 A. I can't even see.

12 Q. Do you recognize that person?
13 (Indicating.)

14 A. See, that's when he was making the
15 statement, "That thieving nigger ain't going to
16 take my money." He did, he reached back and
17 said, "That thieving nigger ain't going to take
18 my fucking money." (Indicating.)

19 MR. CAMPBELL: The witness is
20 stating that he pointed to her as the video is
21 showing.

22 MS. HANSON: Yes, he did.

23 BY MS. GRAGEL:

24 Q. This individual here, that's Andrew, see
25 him?

1 **A.** That's Andrew.

2 **Q.** I didn't quite get it.

3 Now, for the record, at the bottom corner
4 of this screen, and it will be available
5 electronically for the arbitrator, this
6 discussion that the witness started having about
7 when this was said appears around two minutes
8 and 36 seconds --

9 **MR. CAMPBELL:** I'm going to
10 object. The witness is sitting here saying she
11 doesn't know. We have an attorney testifying
12 what it is. If she wants to have her witness
13 get up there and testify when it started and
14 when it didn't -- she's not here to testify.

15 **MS. GRAGEL:** I'm sorry. The
16 witness when she said that's what happened,
17 that's what he said --

18 **MR. CAMPBELL:** I think you should
19 have pointed it out and had her testify to it,
20 not for you to testify after the fact as to when
21 it started and when it didn't.

22 **BY MS. GRAGEL:**

23 **Q.** Do you see here at the bottom there's some
24 green numbers? What do those numbers mean?

25 **A.** 236.

1 **Q.** And there is a picture here of Mr. -- do
2 you recognize that picture of Mr. Harting?

3 **A.** Mr. Harting.

4 **Q.** Mr. Harting is standing on the other side
5 of the wall by the cash register and what do the
6 green numbers show?

7 **A.** Two minutes and 40 seconds.

8 **Q.** Two minutes, 40, and, again, we are not
9 offering those as a time sequence, but as
10 numbers for point of reference on this tape.
11 That's the end of the tape.

12 Are there portions of this you would like
13 played back?

14 **A.** Go all the way back to the time he actually
15 walked up to my counter.

16 **Q.** White shirt, dark pants.

17 **A.** That's what you said. Did he just arrive?

18 **Q.** We'll pause it. I don't see dark pants and
19 white shirt there and it's at reference point
20 112.

21 **MR. FELDMAN:** What is this being
22 offered for?

23 **MS. GRAGEL:** I think there are a
24 number of things that can be offered.

25 **MR. FELDMAN:** Why don't you tell

1 me?

2 **MS. GRAGEL:** The first is
3 throughout this process none of these
4 individuals that are sitting here are reacting.
5 There was, in fact, a long conversation, and the
6 tape is an opportunity to review it later, which
7 shows no reaction by any by-standers. To the
8 extent that Ms. Hanson has testified there was a
9 long line of people during this incident, the
10 tape shows otherwise.

11 **MS. HANSON:** No, it doesn't. It
12 doesn't show a long line of people when he first
13 arrived, but -- and this cashier here, if you
14 notice the cashier is standing here and the gate
15 is down. Whenever you see something like that,
16 they're doing what we call payroll deduction,
17 and what they're doing is helping get the line
18 down. That's the reason why the other cashier
19 is standing there. There's no reason for him to
20 be there if the gate is there, so he was helping
21 get the line down.

22 **MS. GRAGEL:** Hold on --

23 **MR. CAMPBELL:** Let her answer.
24 You've raised this issue and she's answering and
25 you're trying to cut her off.

1 **MS. HANSON:** So when he first
2 arrived, no, there was probably no one there
3 maybe. But it went on for so long, if you
4 notice the cafeteria, people is moving around.
5 These people now are in my line, and this
6 manager is standing at the salad bar; and the
7 reason why I know so is because when I felt
8 threatened by him, I looked up, and they were
9 standing there; they had stopped making their
10 food and had turned all the way around to make
11 sure everything was okay.

12 So there's people standing at the
13 salad bar, but this does not show it. And they
14 did react to it. If you zoom that in, you'll
15 see them stop, turn around and watch us through
16 the whole thing.

17 **BY MS. GRAGEL:**

18 **Q.** So just to get a point of reference at --
19 the tape starts at 000 and you tell me that this
20 other cashier came to help you move the line.

21 **A.** He was there to help me move the line.
22 Now, if you notice he's going to walk off. When
23 the gentleman comes, he walks off because my
24 line is in control.

25 **Q.** White shirt, black pants, the other cashier

1 is still next to you?

2 **A.** Yes, he is.

3 **Q.** And we are at reference 21.

4 **A.** He's gone. Keep going. He'll walk right
5 away. He's gone.

6 **Q.** Reference point 25.

7 **A.** I don't know nothing about reference. I
8 don't know. All I know is what happened that
9 day. I don't know about the numbers, I don't
10 know about the time.

11 **Q.** And at this section the tape shows at
12 reference point 28. Now, back here in this area
13 of the salad bar, do you recognize anyone?

14 **A.** I can't even see that. You can't even see
15 that unless you're going to bring that in much
16 plainer.

17 **Q.** Is this the area where you would --

18 **A.** The salad bar should be somewhere right in
19 front of my register. If you want to see some
20 persons reacting, that's where we should have
21 zoomed, not here.

22 **Q.** Do you recognize this person at the left
23 counter with the -- this is reference point 40.
24 Do you recognize a dark-skinned person wearing a
25 hospital uniform?

1 **A.** No. Can you bring that person closer to
2 me?

3 **Q.** No.

4 **A.** Then I do not know.

5 **Q.** And we'll stop here. This is reference
6 point 50.

7 **A.** So this went on a long time. A long time.

8 **Q.** If this is a clock time, it went on
9 something in the range of two minutes, 30
10 seconds.

11 **A.** That's a long time.

12 **Q.** At this point, do you remember anything
13 that was being said between you and Mr. Harting
14 at 50 seconds?

15 **A.** I cannot tell you what we said at 50
16 seconds to nothing on that laptop.

17 **Q.** How far into the contact was it between you
18 and Mr. Harting where you felt that it had
19 gotten heated?

20 **A.** The minute he said to me, "No, I gave you a
21 ten."

22 I said, "No, sir, you gave me six dollars."

23 He went, "I gave you a fucking ten."

24 I said, "I see now I have to go get my
25 manager."

1 **Q.** And if I understand correctly, that was
2 around the time the manager came because he was
3 watching?

4 **A.** I don't know whether he was watching or
5 not. All I know is when I got up to go get my
6 manager, he was already on his way where we
7 were. It was probably because my line was held
8 up.

9 **Q.** And if your line was held up, would that be
10 people standing behind Mr. Harting?

11 **A.** That would be people standing behind him,
12 but you can't see if nobody is standing behind
13 him on that tape.

14 **Q.** And how many people were behind him?

15 **A.** I cannot tell you.

16 **Q.** Anybody after Mr. Harting passed through
17 your line speak to you about what they observed?

18 **A.** Sure, they did. Lots of people did.

19 **Q.** How many?

20 **A.** I can't tell you how many.

21 **Q.** Males or females?

22 **A.** I do not know.

23 **Q.** Hospital clothes or outsiders?

24 **A.** I do not know.

25 **Q.** Did they talk to you over a few minutes or

1 over several hours?

2 **A.** I don't have time to be held up through my
3 line. It don't take long to say, "Did you hear
4 that," and they were out. "That was rude," and
5 they were out. "You should report that," and
6 they were out. It don't take but a second.
7 They'd say that while I'm making the
8 transaction.

9 **Q.** You heard that how many times?

10 **A.** People that was in the line -- people
11 walked up to me and asked me, "Are you all
12 right?" And I said "Yes," end of it.

13 **Q.** Five, ten, fifteen?

14 **A.** I do not know. You asked me did people
15 discuss it with me. My answer is yes. How
16 many? I do not know.

17 **Q.** When people come through the line, those
18 individuals that work for University Hospitals
19 have a badge, correct?

20 **A.** Yes, they do.

21 **Q.** And those that work for University
22 Hospitals as regular hospital employees, they
23 also have a swipe card, correct?

24 **A.** Yes, they do.

25 **MR. FELDMAN:** A what?

1 **MS. GRAGEL:** Swipe card.

2 **MS. HANSON:** Wait a minute. I
3 don't want to answer that wrong. Say it again.

4 **BY MS. GRAGEL:**

5 **Q.** Do University Hospital employees also have
6 a swipe card that they can use at the line to
7 buy food?

8 **A.** Some of them.

9 **Q.** Did Mr. Harting, if you remember, have a
10 badge?

11 **A.** He did not give me a badge.

12 **Q.** Did you know from the year or so that you
13 worked at the hospital that construction workers
14 had identification badges because they worked
15 within the building?

16 **A.** Some of them do.

17 **Q.** And did you have occasion as a cashier to
18 see construction workers who had their worker
19 badges coming through your line?

20 **A.** Yes, I have.

21 **Q.** And did Mr. Harting have a construction
22 worker's badge when he --

23 **A.** No, he did not.

24 **Q.** As far as you know he had no badge?

25 **A.** He had no badge.

1 Q. Would that have been significant to you one
2 way or the other?

3 A. No, it wouldn't have. I would have waited
4 on him regardless.

5 Q. We just went through an exercise where you
6 looked at a film with me in the presence of the
7 arbitrator. Had you ever seen this film before
8 today?

9 A. No, I haven't.

10 MS. GRAGEL: Nothing further.

11 MR. CAMPBELL: I just have a few
12 questions and we'll let you go.

13 REDIRECT EXAMINATION

14 BY MR. CAMPBELL:

15 Q. Did you ever see the film that showed how
16 much change you gave to Mr. Harting?

17 A. Yes, I did.

18 Q. Did you give him the correct change?

19 A. I did.

20 Q. Did it upset you when you saw that he was
21 being rewarded for his conduct?

22 A. Yes, it did.

23 Q. Did you feel threatened by Mr. Harting?

24 A. Yes, I do.

25 Q. Were you embarrassed by his conduct?

1 **A.** I was, yes.

2 **MR. FELDMAN:** Threatened, you
3 mean physically threatened?

4 **MS. HANSON:** Yeah, I felt
5 physically threatened, yeah.

6 **BY MR. CAMPBELL:**

7 **Q.** Have you ever had somebody argue with you
8 for over two minutes in your line?

9 **A.** No.

10 **Q.** And it's your testimony that you asked your
11 manager to -- you raised an issue as to whether
12 you could continue to work as a cashier if
13 Mr. Harting may come back?

14 **A.** Yes.

15 **Q.** It they told you that Mr. Harting was free
16 to come back in the cafeteria, what would you
17 have done?

18 **A.** My husband told me I had to quit.

19 **Q.** You would have --

20 **A.** I had to quit.

21 **Q.** You like your job?

22 **A.** Yeah.

23 **Q.** You would have walked away from your job if
24 Mr. Harting was permitted to come back?

25 **A.** I would have had to. My husband told me I

1 had to quit.

2 Q. Now, the union is here trying -- they
3 showed you that video and asked you the
4 questions trying to say that you're not telling
5 the truth.

6 Has anybody asked you to say anything other
7 than the truth here?

8 A. No.

9 Q. You've said everything truthful here?

10 A. I have.

11 Q. Have you changed your story at all
12 throughout the course of this?

13 A. No. I am a minister and I would not lie on
14 Mr. Harting.

15 Q. When you say "minister," tell us a little
16 bit more about that.

17 A. I'm an evangelistic minister. I would not
18 lie.

19 Q. Have you had to go through training or
20 certification to become an evangelistic
21 minister?

22 A. Yes, I did.

23 Q. How long have you been a minister?

24 A. I've been a minister now for two and a half
25 years.

1 Q. And for what church are you a minister?

2 A. Springfield Missionary Baptist Church,
3 Cleveland, Ohio.

4 MR. CAMPBELL: I don't have any
5 further questions for Ms. Hanson at this time.

6 RECROSS-EXAMINATION

7 BY MS. GRAGEL:

8 Q. Ms. Hanson, you said that you spoke with
9 your spouse about the situation.

10 A. Yes.

11 Q. Did you speak to him before or after you
12 made the write-up marked as Respondent's
13 Exhibit 2?

14 A. Both times. When I went home, I told him
15 about the situation. He asked me if I had
16 reported it and I told him, no, because Andrew
17 had really dealt with the guy, and I was just
18 describing his behavior and how intimidated, you
19 know, he made me feel and we forgot about it.

20 And then the day of the 29th I was going to
21 call him to come and get me because I was so
22 upset by it, but I never made it to the phone.
23 So I discussed it with him after I got home, and
24 I told him I had wrote up the write-up, and he
25 didn't say anything. And then we came down for

1 the arbitration, and then my husband actually
2 seen Mr. Harting. And he went, "You know, Tish,
3 if he's allowed to come back, you're going to
4 have to quit."

5 Q. So that conversation about quitting the job
6 didn't happen on January 27th?

7 A. No.

8 Q. It didn't happen on January 29th?

9 A. No.

10 Q. It happened here in April --

11 A. Right.

12 Q. -- when this arbitration proceeding
13 started?

14 A. Right, when we felt like he would be
15 allowed to come back into the cafeteria.

16 MS. GRAGEL: I have nothing
17 further.

18 MR. FELDMAN: Let me just get the
19 sequence of events, okay. The situation
20 occurred on the 27th of January; is that right?

21 MS. HANSON: Yes.

22 MR. FELDMAN: While you were at
23 your position as a cashier in the cafeteria.

24 MS. HANSON: Yes.

25 MR. FELDMAN: What time of day?

1 **MS. HANSON:** When I wrote the
2 statement, about 7:00 to -- somewhere between
3 7:00 and 8:00 p.m. I'm not sure.

4 **MR. FELDMAN:** 7:00 to 8:00 p.m.?

5 **MS. HANSON:** I think so.

6 **MR. FELDMAN:** Now, on the 28th
7 nothing happened.

8 **MS. HANSON:** No.

9 **MR. FELDMAN:** Did you discuss it
10 with anybody on the 28th?

11 **MS. HANSON:** No.

12 **MR. FELDMAN:** January 29th came
13 around and Mr. Harting came back again on that
14 date?

15 **MS. HANSON:** Yes.

16 **MR. FELDMAN:** What time of day
17 was that?

18 **MS. HANSON:** I can't say
19 exactly.

20 **MR. FELDMAN:** Give me -- was it
21 supper menu, dinner menu, luncheon menu,
22 breakfast menu?

23 **MS. HANSON:** Probably. Let's
24 say about 7:00 to 8:00.

25 **MR. FELDMAN:** 7:00 to 8:00 the

1 27th?

2 MS. HANSON: Maybe.

3 MR. FELDMAN: And then you saw
4 him in your line again?

5 MS. HANSON: Yes.

6 MR. FELDMAN: And this is when
7 the refreshing incident occurred that the
8 manager gave Mr. Harting a meal ticket?

9 MS. HANSON: Yes.

10 MR. FELDMAN: And that set you
11 off again?

12 MS. HANSON: I wasn't -- it
13 didn't set me off the first time. It didn't
14 bother me. It didn't annoy me. It set me
15 off -- that set me off that time.

16 MR. FELDMAN: The meal ticket?

17 MS. HANSON: Yes.

18 MR. FELDMAN: Because that in
19 your mind made you feel that you were guilty --

20 MS. HANSON: Yes.

21 MR. FELDMAN: -- because they
22 were trying to give back something to
23 Mr. Harting?

24 MS. HANSON: And then it made me
25 feel like -- in my heart, I wanted so much for

1 him to know that I really had gave him the right
2 change, you know. I wanted him to know that.

3 **MR. FELDMAN:** No one has asked
4 the question, but have you been short or over in
5 your cash register at any other time?

6 **MS. HANSON:** A few pennies
7 maybe.

8 **MR. FELDMAN:** Few pennies.

9 **MS. HANSON:** Most of the time
10 perfect draws.

11 **MR. FELDMAN:** Never \$25?

12 **MS. HANSON:** Oh, no.

13 **MR. FELDMAN:** Or any other large
14 sum?

15 **MS. HANSON:** Oh, no.

16 **MR. FELDMAN:** Now, did you fully
17 discuss this meal ticket activity with your boss
18 as to why he gave --

19 **MS. HANSON:** Yes, I did.

20 **MR. FELDMAN:** What was the answer
21 that he said?

22 **MS. HANSON:** What did he tell
23 me? He told me because he was just trying to
24 keep the peace, or he was just trying -- he said
25 he was just trying to show him that we weren't

1 all that bad or something like that. I don't
2 know.

3 **MR. FELDMAN:** Is there anything
4 else that you want to tell me about this?

5 **MS. HANSON:** That's it.

6 **MR. FELDMAN:** Okay. Any further
7 questions?

8 **MS. GRAGEL:** Just one, and it's
9 not quite in response to your question.

10 **BY MS. GRAGEL:**

11 **Q.** In the year or so that you have worked at
12 the University Hospital cafeteria, at anyplace
13 are there signs posted that say to the effect
14 "Construction workers, don't eat here," or
15 "Construction workers, keep out"?

16 **MS. HANSON:** None that I've
17 seen. None that I've seen.

18 **MR. FELDMAN:** Thank you very
19 much. Next witness.

20 DAVID HAWK
21 of lawful age, a witness herein, was examined
22 and testified as follows:

23 **MR. FELDMAN:** For the record, may
24 I have your name?

25 **MR. HAWK:** David Hawk.

1 **MR. FELDMAN:** David Hawk, just
2 like the bird?

3 **MR. HAWK:** Yes.

4 **MR. FELDMAN:** Do you understand,
5 Mr. Hawk, you're under oath?

6 **MR. HAWK:** Uh-huh.

7 DIRECT EXAMINATION

8 **BY MR. CAMPBELL:**

9 **Q.** Just so the record is clear, if you could
10 say "yes" or "no" audibly so the court reporter
11 can get down a good record, okay?

12 **A.** Okay.

13 **Q.** Who is your employer?

14 **A.** Sodexho.

15 **Q.** What is Sodexho's role at University
16 Hospitals' main campus?

17 **A.** Well, in my area it's the retail -- it's
18 the retail for the food service, which includes
19 Einstein's and the cafeteria.

20 **Q.** In simple terms, does Sodexho manage the
21 cafeteria?

22 **A.** Yes.

23 **Q.** Sodexho employees actually supervise UH
24 employees?

25 **A.** Yes.

1 **Q.** When I say "UH," University Hospitals'
2 employees?

3 **A.** Uh-huh.

4 **Q.** Just answer "yes" or "no."

5 **A.** Yes.

6 **Q.** And we just heard from Lattisia Hanson.
7 Do you know Ms. Hanson?

8 **A.** Yes.

9 **Q.** And is she a UH employee?

10 **A.** Yes.

11 **Q.** And what is your position?

12 **A.** Her position is cashier.

13 **Q.** And what is your title?

14 **A.** My title is retail manager.

15 **Q.** And in simple terms, what is a retail
16 manager?

17 **A.** Retail manager, I oversee the daily
18 operations of the cafeteria, Einstein's Bagels
19 Brothers, maintain the employees and the food,
20 overall --

21 **Q.** Who is the -- if we're talking about
22 Sodexho at the main campus, who is the top
23 Sodexho supervisor?

24 **A.** Top Sodexho supervisor is Tom Schwendeman
25 and Dan Ballard.

1 Q. And below Dan, are you at that next tier?

2 A. I would say I'm the next tier.

3 Q. Are you with Heather and Andrew?

4 A. Yes.

5 Q. And Heather is Heather Dougherty McDonnell?

6 A. Yes.

7 Q. And Andrew Powel?

8 A. Yes.

9 Q. Are you aware of Ms. Hanson's employment,
10 of whether she's a good employee or not?

11 A. Yes.

12 Q. How is her performance?

13 MR. FELDMAN: Are you --

14 BY MR. CAMPBELL:

15 Q. Are you familiar with Ms. Hanson's work
16 performance?

17 A. Yes.

18 Q. And what is it, good, bad?

19 A. Good.

20 Q. As a cashier, has she had problems?

21 A. Oh, no. No.

22 Q. How about as to her drawer being accurate
23 or inaccurate, how has she been?

24 A. She's very accurate.

25 Q. Now, let me ask you about your role in the

1 incident with -- first of all, I'm going to ask
2 you, are you familiar with a Mr. Harting? Has
3 that name ever come to you or just the
4 individual?

5 **A.** I don't know Mr. Harting.

6 **Q.** You don't know the name?

7 **A.** I don't know the name.

8 **Q.** Do you recognize the individual in here --
9 did you ever see him?

10 **A.** Yeah. Well, I mean, if we're talking about
11 the gentleman --

12 **Q.** Why don't you turn to that side of the
13 table and let us know which gentleman --

14 **A.** Right there. (Indicating.)

15 **MS. GRAGEL:** Identification
16 stipulated.

17 **MR. CAMPBELL:** He's pointing to
18 the grievant.

19 **BY MR. CAMPBELL:**

20 **Q.** And tell us about -- so you didn't know his
21 name at the time you did this?

22 **A.** No. In fact, I just found out his name.

23 **Q.** I'm going to tell you his name is
24 Mr. Harting just so there's no confusion. Tell
25 us what your involvement was in this Mr. Harting

1 incident?

2 **A.** Okay. On Friday morning I was consulted by
3 Heather Dougherty.

4 **MR. FELDMAN:** Friday morning,
5 January 27th?

6 **MR. HAWK:** No, Friday was the
7 30th, I think.

8 **MR. CAMPBELL:** Let me show the
9 arbitrator the calendar. The 29th she worked
10 six to six and then --

11 **MR. FELDMAN:** Friday morning,
12 January 30th.

13 **BY MR. CAMPBELL:**

14 **Q.** Just so the record is clear, what shift do
15 you typically work?

16 **A.** I normally work 8:00 to 5:30 shift.

17 **Q.** 8:00 a.m.?

18 **A.** 8:00 a.m.

19 **Q.** So if we're talking about Friday,
20 January 30th, 2009, you would have come in
21 around 8:00 a.m.?

22 **A.** Yes.

23 **Q.** Tell us what happened on that day.

24 **A.** Heather came in, I think it was around 9:30
25 and --

1 **Q.** And just so the record is clear, Heather
2 who?

3 **A.** Heather Dougherty McDonnell. She came in
4 and she was talking to me about the situation
5 that happened. Do you want me to tell the
6 details that she told me?

7 **MR. FELDMAN:** I want you to wait
8 for a question so you can answer it.

9 **MR. HAWK:** Okay. Sorry.

10 **BY MR. CAMPBELL:**

11 **Q.** Did she give you any written statements?

12 **A.** She did after we talked, after we talked
13 about it, yeah.

14 **Q.** Tell us what you talked about with Heather
15 first.

16 **A.** She said that a gentleman came in on
17 Tuesday night and claimed that Tish shorted him
18 money, and said that he -- now, this is what she
19 heard from what she was telling me from Andrew,
20 that he acted very aggressive, was accusing Tish
21 of shorting him money. And then she went and
22 said on Thursday night he came in and when
23 Andrew told him that he didn't have the money --
24 that she wasn't short money on her register and
25 that her register came out perfect balance, that

1 he started to yell at Andrew and say, "Bullshit,
2 this is bullshit"; and it was also stated that
3 Tish said that he said "nigger" to her.

4 **Q.** What happened next?

5 **A.** Okay. So I pulled -- I was talking to her
6 about it, so I pulled up the video.

7 **MR. FELDMAN:** Which video?

8 **MR. HAWK:** The video on the
9 computer. I was able to see --

10 **MR. FELDMAN:** Which video?
11 There's two covering the cashier.

12 **MR. HAWK:** I pulled up the one
13 from Tuesday and the one --

14 **MR. FELDMAN:** I'm not making
15 myself clear. I understand we saw one video
16 here from the back of the area covering both
17 cashiers.

18 **MR. HAWK:** Yeah.

19 **MR. FELDMAN:** I understand
20 there's a second video covering one cashier at a
21 time. Which video did you pull up?

22 **MR. HAWK:** I pulled up the one
23 from the back, not the one that's over top of
24 the cashier. Exactly.

25 **MR. CAMPBELL:** Let the record

1 reflect that counsel showed him the video that
2 was shown to Ms. Hanson and he said that's the
3 one.

4 **MS. GRAGEL:** I have showed him
5 just the cover -- the first frame of the video
6 that you looked at with us, Mr. Arbitrator, with
7 the prior witness. And, for the record, it may
8 make sense if I can identify this as Union
9 Exhibit 3. For purposes of the record, if we
10 could make the video of January 27th Union
11 Exhibit 2, and the video of January 29th, which
12 has not yet been displayed here, Union 3.

13 **MR. FELDMAN:** Union 2 is
14 January 27th video?

15 **MS. GRAGEL:** Yes, sir.
16 (Thereupon, Union Exhibits 2 and 3
17 were marked for purposes of
18 identification.)

19 **MR. CAMPBELL:** And I think at this
20 point that's all I can agree to since we haven't
21 presented January 29th yet.

22 **MR. FELDMAN:** Union 3 a video of
23 January 29th?

24 **MS. GRAGEL:** Which has not been
25 shown.

1 **MR. FELDMAN:** The one you're
2 showing me is January 27th?

3 **MS. GRAGEL:** Yes, sir.

4 **MR. FELDMAN:** You said you pulled
5 out the video, and now we got sidetracked and
6 we're back on track. Which video did you pull
7 out? What date?

8 **MR. HAWK:** Within the same
9 sequence, I did pull the 27th and I did pull the
10 29th.

11 **MR. FELDMAN:** Continue on.

12 **BY MR. CAMPBELL:**

13 **Q.** What did you pull the videos for?

14 **A.** I pulled it just to -- I wanted to see if I
15 could see anywhere where I could see that maybe
16 he was being loud, boisterous, maybe aggressive.

17 **Q.** What did you determine based on your
18 review?

19 **A.** I mean, you could see where there were
20 motions being made, and that he was verbally
21 looking back, and to me it looked like he was
22 saying something back.

23 **Q.** There's no audio on the security video?

24 **A.** Right, no audio.

25 **Q.** What did you do after reviewing the

1 videotapes?

2 **A.** After reviewing the videotape, I'm trying
3 to think of the sequence, but I think after I
4 viewed the videotapes I think I called Sue.

5 **Q.** Sue Peplowski?

6 **A.** Peplowski. You know what, I didn't call
7 Sue Peplowski. I actually called -- I had
8 Heather call Tish because I wanted to interview
9 Tish.

10 **Q.** Tish is Ms. Hanson?

11 **A.** Lattisia Hanson that was just in here. I
12 wanted to get how she --

13 **Q.** Did you interview Ms. Hanson?

14 **A.** Yes.

15 **Q.** Tell us what you recall from that
16 interview.

17 **A.** From the interview, she stated that, you
18 know, she didn't short the gentleman, and that
19 she actually on Thursday just -- you could see
20 where on Thursday she moved herself off of the
21 register and let Andrew actually take him
22 because she didn't feel comfortable with him.
23 And she also stated to me that he did say
24 "nigger" to her.

25 **Q.** Was she upset about the incident?

1 **A.** Oh, yes.

2 **Q.** Did she say anything to you about whether
3 she was willing to continue working with him
4 available -- with him being on the property?

5 **MS. GRAGEL:** Objection, form.
6 It's getting a little leading here,
7 Mr. Arbitrator.

8 **MR. FELDMAN:** Rephrase.

9 **BY MR. CAMPBELL:**

10 **Q.** Did she say anything to you about
11 continuing her work?

12 **A.** I think I actually asked her, I said -- one
13 of the questions I asked her, I said, "Tish" --
14 I call her "Tish." I said, "Tish, did you feel
15 threatened?"

16 And she said, "Yes, I felt very threatened
17 and I feel very uncomfortable with this
18 gentleman."

19 **Q.** Let me show you what's been marked as
20 Respondent's Exhibit 2 and ask you if you've
21 seen that document before today?

22 **A.** Yes.

23 **Q.** What is that?

24 **A.** Lattisia's statement.

25 **Q.** How did you get that? Who gave it to you?

1 **A.** Heather.

2 **Q.** In your discussion with Tish, was she
3 consistent with the written statement?

4 **A.** Uh-huh.

5 **Q.** Just say "yes."

6 **A.** Yes.

7 **Q.** What did you do after interviewing
8 Ms. Hanson?

9 **A.** After I interviewed Tish, I called up
10 Andrew.

11 **Q.** Andrew who?

12 **A.** Andrew Powel and I wanted to see, you know,
13 was this gentleman using cuss words and
14 everything towards him and how did he feel. And
15 he stated that, "Yes," and that he felt, you
16 know, uncomfortable, and that the guy -- the
17 gentleman was yelling "bullshit" to him.

18 **MR. FELDMAN:** The guy was what?

19 **MR. HAWK:** The guy was yelling
20 "bullshit" at him, saying "bullshit" to him.

21 And he also stated to me that John Rivera was
22 there so I could interview John Rivera, too.

23 **BY MR. CAMPBELL:**

24 **Q.** Did you interview John?

25 **A.** Yes.

1 Q. Who is John? What position?

2 A. He is the executive chef in the patient
3 service area.

4 Q. And what did John tell you?

5 A. I didn't have to call John. John was -- I
6 think -- I saw John at work that day so I
7 interviewed him, and he said, "Yeah, I'm
8 standing there, and I was kind of like, wow, you
9 know, this guy is yelling 'bullshit' at Andrew,"
10 okay, so he confirmed.

11 MR. FELDMAN: Confirmed the word
12 "bullshit"?

13 MR. HAWK: Confirmed multiple
14 times of saying "bullshit," so --

15 BY MR. CAMPBELL:

16 Q. What did you do next?

17 A. To that point -- in my mind I felt that the
18 employee and the managers did not feel safe or
19 they didn't feel comfortable with this
20 gentleman, so I called to try to get
21 verification from Sue if it would be okay if we
22 could ban him from the cafeteria.

23 Q. And so based on your investigation and your
24 interviews of the witnesses, both males and
25 females told you that they felt threatened?

1 **A.** Yes.

2 **Q.** Both males and females told you that his
3 conduct was inappropriate?

4 **A.** Yes.

5 **Q.** And it was your recommendation to Sue that
6 he be banned from the cafeteria?

7 **A.** Yes.

8 **Q.** Go on.

9 **A.** Just to clarify. John Rivera, he didn't
10 say to me about him feeling threatened, he just
11 verified the profanity. I don't want to --

12 **Q.** Thank you for that. And what did Sue do?

13 **A.** I think Sue -- when talking to Sue, Sue
14 said, "Do me a favor and save the video,"
15 Exhibit 3, the one from the 27th and 29th. Now,
16 I didn't know how to do that, so I called
17 security and I had security come up and they
18 saved it for me.

19 **Q.** Who did the still photos of the individual?

20 **A.** The still?

21 **Q.** Let me show you. Have you seen these
22 stills before?

23 **A.** I haven't seen the stills, but these are
24 part of the -- these are part of the video.
25 These are part of the video. They look closer

1 to when he's walking away.

2 Q. Were you involved in determining who the
3 individual was who was responsible for these
4 issues, determining his name?

5 A. Naming him, no. I had -- we went through
6 the time and then Heather pointed him out as the
7 gentleman.

8 Q. To who?

9 A. To me on the video camera.

10 Q. Do you know who was able to determine that
11 he was Mr. Harting? Were you involved in that
12 or was that UH?

13 A. I think that was UH to verify it.

14 Q. Did you talk to Sue about what was
15 ultimately done as to Mr. Harting?

16 A. What was our --

17 Q. Did Sue Peplowski report back to you as to
18 what UH decided to do?

19 A. Yeah. She stated that she felt that we
20 didn't want this gentleman to be in the
21 cafeteria and pose a -- you know, any time you
22 have someone that you feel might pose a threat
23 to your employees, you don't want to take that
24 chance. If you let it go any further, it might
25 turn into something worse. So we verified that

1 that is what we would -- the decision we would
2 like to make.

3 **Q.** To your knowledge, has Mr. Harting returned
4 to the cafeteria after that?

5 **A.** After I've told him?

6 **Q.** After you talked to Sue.

7 Have you met him before in person?

8 **A.** No.

9 **Q.** You haven't met Mr. Harting in person?

10 **A.** No.

11 **Q.** Have you ever spoken with Mr. Harting?

12 **A.** Not until -- no.

13 **Q.** Do you know who communicated to him that he
14 was not to return to the property?

15 **A.** I did.

16 **Q.** So I thought you said you didn't speak to
17 him.

18 **A.** I thought you meant after I spoke with Sue
19 right away.

20 **Q.** Tell me about your conversation.

21 **A.** After I spoke with Sue and she verified
22 that, our understanding was the next time he
23 comes in, he would be approached and asked not
24 to return.

25 **Q.** Did you do that?

1 **A.** Yes.

2 **Q.** Tell us about that.

3 **A.** I let the other managers know that, you
4 know -- up until now, from my understanding,
5 most of the time he visited after -- it seemed
6 like after I would be gone or sometimes I would
7 be in the office finishing up my work or getting
8 ready to leave. He came back in around between
9 5:00 and 5:30 probably that day.

10 **Q.** Let me just put a time frame on it.

11 **A.** On Friday, the 30th.

12 **Q.** Friday, the 30th. So he came in again on
13 the 30th?

14 **A.** Yes.

15 **Q.** Tell us what happened.

16 **A.** He went and got something to eat. When I
17 noticed that he sat down and got something to
18 eat.

19 **Q.** Was Ms. Hanson working at this point?

20 **A.** No, not yet. So I approached him, and I
21 sat down and I stated to him that -- I said,
22 "Sir, you had a little problem with one of my
23 employees," and he said, "Yeah, she's an f-ing
24 thief."

25 **Q.** Did he use "f-ing"?

1 **A.** "Fucking." I said, "Well, sir, the
2 facts show from the procedures that we followed
3 that she did not take anything."

4 He said, "She's a thief." And then I think
5 he said something about, "She's done this to six
6 or seven of my friends" or something like that
7 was his statement, okay.

8 I said, "Well, sir, we perform audits on
9 all the cashiers, we follow the appropriate
10 procedures. This did not show any of her being
11 up on money or anything like that." I said to
12 him, I said, "So my management and my employees
13 do not feel comfortable with you coming here
14 anymore so I'm going to ask you to no longer
15 come here."

16 He said something like, "You're willing to
17 give \$12 a day for me not -- that's what I
18 spend?"

19 I said, "Yes, sir. I think it's best for
20 all of us that you no longer come to the
21 cafeteria." Basically that was the end of the
22 conversation.

23 **MR. CAMPBELL:** I don't have any
24 further questions. You'll have to be asked some
25 questions by the union.

1 **MR. FELDMAN:** Are you ready?

2 **MS. GRAGEL:** Yes.

3 CROSS-EXAMINATION

4 **BY MS. GRAGEL:**

5 **Q.** Mr. Hawk, you said you recognize
6 Mr. Harting here today.

7 **A.** Yes.

8 **Q.** Had you seen him in the University
9 Hospitals' cafeteria before January 27th, 29th,
10 30th of this year?

11 **MR. FELDMAN:** Yes or no.

12 **MR. HAWK:** No.

13 **MR. FELDMAN:** Next question,
14 please.

15 **BY MS. GRAGEL:**

16 **Q.** Does Sodexho run the food service area in
17 the Case Western Reserve Animal Health Building?

18 **A.** Animal Health?

19 **Q.** Yes.

20 **A.** No.

21 **Q.** Do you run a food service worker for Case
22 Western Reserve employees?

23 **A.** No.

24 **Q.** So the Case cafeteria is not a Sodexho
25 managed cafeteria?

1 **A.** No.

2 **MR. FELDMAN:** Where is the Case
3 cafeteria?

4 **BY MS. GRAGEL:**

5 **Q.** Is there a Case Western cafeteria that is
6 basically on the other side of the wall of the
7 University Hospitals' cafeteria that Sodexho
8 manages?

9 **A.** No.

10 **Q.** Is there a Case cafeteria in the next
11 building from the cafeteria that you manage?

12 **A.** I think there's one in the vicinity.

13 **Q.** You've never been there?

14 **A.** No.

15 **Q.** I thought maybe there -- I'm sorry to take
16 a while -- thank you.

17 **A.** No, that's okay.

18 **Q.** Turning to things that you do know about,
19 in the cafeteria area at University Hospitals,
20 there are security cameras and you review the
21 tapes of them?

22 **A.** Yes.

23 **Q.** One of them is Exhibit 2 and I showed you
24 that screen.

25 **A.** Right.

1 Q. Who maintains those tapes? Are those
2 Sodexho tapes, University Hospitals' police?

3 A. From my understanding, they're digital and
4 they are -- I think they're maintained by the
5 Protective Services, but I have access to the
6 ones that are involved with the cafeteria.

7 Q. And University Hospitals has Protective
8 Services, correct?

9 A. Yes.

10 Q. And the first time that anyone from your
11 company talked to Protective Services about this
12 incident was on January 30th?

13 A. From my understanding, yeah.

14 Q. And I take it your managers of Sodexho are
15 trained to call security if there is a safety
16 concern in the cafeteria.

17 A. Yeah, if they feel -- yes.

18 Q. And no one as far as you know called
19 security on January 27th or January 29th?

20 A. Yeah, as far as I know.

21 Q. And it's true, is it not, that Sodexho has
22 a company commitment to workplace safety and
23 security?

24 A. I'm sure, yes.

25 Q. Sodexho prides itself on having a

1 harassment-free workplace, does it not?

2 **A.** Yes.

3 **Q.** So when you heard from Heather or Andrew
4 Powel, the managers, that an incident had
5 happened two days earlier on January 27th, were
6 you concerned that neither Andrew nor anyone
7 else had brought it to your attention at an
8 earlier date?

9 **A.** Yeah. Yeah.

10 **Q.** And did you talk with Andrew or Heather
11 about why they didn't report it earlier?

12 **A.** No, I was too busy that day trying to
13 handle the situation of what I thought needed to
14 be done.

15 **Q.** So you never talked to them about that
16 subject, about bringing it to your attention
17 earlier than two or three days later?

18 **A.** No. No.

19 **Q.** And ultimately you've been talking here
20 about talking to a Sue Peplowski. Can you spell
21 that?

22 **A.** P-e-p-l-o-w-s-k-i.

23 **Q.** And what is Ms. Peplowski's position?

24 **A.** She's with Human Resources.

25 **Q.** Of University or Sodexho?

1 **A.** Of University.

2 **Q.** And was it Ms. Peplowski's determination or
3 yours that Mr. Harting should be asked not to
4 return to the cafeteria when you had the
5 conversation on January 30th?

6 **A.** I felt it was a -- hers was the final, but
7 it was a collaboration of both of us that --

8 **Q.** And on January 30th when you had this
9 discussion with Mr. Harting and asked him not to
10 come back --

11 **A.** Yes.

12 **Q.** -- he finished his meal and left, did he
13 not?

14 **A.** Yes.

15 **Q.** And he did not return during the remainder
16 of that work shift?

17 **A.** No.

18 **Q.** And when you finished your dealing with
19 this situation on January 30th, as far as you
20 were concerned it was done?

21 **A.** Yeah.

22 **Q.** It was not your decision to fire
23 Mr. Harting from his employment, was it?

24 **A.** I have no power for that.

25 **Q.** Where in relation to the University

1 Hospitals' cafeteria is the Neonatal Intensive
2 Care Unit?

3 **A.** I have no clue.

4 **Q.** Do you know where the construction workers
5 were working in January of 2009?

6 **A.** No.

7 **Q.** You knew, did you not, that construction
8 workers were eating in the cafeteria?

9 **A.** Yes.

10 **Q.** They were frequent customers?

11 **A.** Yes.

12 **Q.** No signs were posted to tell construction
13 workers to eat elsewhere?

14 **A.** No.

15 **Q.** And when, sir, you reviewed the tape of
16 January 27th, do you recall one incident where
17 Mr. Harting appears to be pointing?

18 **A.** Yes.

19 **Q.** And that's the incident that you're
20 referring to when you could see him gesturing?

21 **A.** Yes.

22 **MS. GRAGEL:** I have nothing
23 further.

24 **MR. CAMPBELL:** I don't have any
25 further questions.

1 **MR. FELDMAN:** Thank you very
2 much.

3 **MR. CAMPBELL:** Can we take a
4 break?

5 **MR. FELDMAN:** How many witnesses
6 do you have?

7 **MR. CAMPBELL:** I'm going to try to
8 gather my troops together now. I know Sue is
9 going to testify.

10 **MR. FELDMAN:** We'll try to get
11 your case in today.

12 **MR. CAMPBELL:** Absolutely.

13 **MR. FELDMAN:** We'll save another
14 day for you.

15 (Thereupon, a recess was taken.)

16 HEATHER DOUGHERTY McDONNELL
17 of lawful age, a witness herein, was examined
18 and testified as follows:

19 **MR. FELDMAN:** For the record,
20 state your name.

21 **MS. McDONNELL:** Heather Dougherty
22 McDonnell. D-o-u-g-h-e-r-t-y. McDonnell is
23 M-c-D-o-n-n-e-l-l.

24 **MR. FELDMAN:** Do you understand
25 you're under oath?

1 **MS. McDONNELL:** Yes.

2 **MR. FELDMAN:** You may inquire.

3 DIRECT EXAMINATION

4 **BY MR. CAMPBELL:**

5 **Q.** Heather, I just have a couple questions for
6 you, not a whole lot, just want to get you out.

7 I know you haven't had a lot of sleep.

8 Who is your employer?

9 **A.** Sodexho.

10 **Q.** And what is your title?

11 **A.** Retail manager.

12 **Q.** How long have you held that position?

13 **A.** I started in October of last year, so nine
14 or ten months.

15 **Q.** And what shift do you work?

16 **A.** Typically I work eight -- 10:00 a.m. to
17 8:00 p.m.

18 **Q.** And you worked last night?

19 **A.** I did. I worked night shift.

20 **Q.** What time did you get off last night?

21 **A.** 3:00 a.m.

22 **Q.** Thank you for coming today.

23 **A.** Absolutely.

24 **Q.** Are you familiar with Ms. Hanson?

25 **A.** Yes.

1 Q. And is she a UH or Sodexho employee?

2 A. Tish is a University Hospitals employee.

3 Q. What is her position?

4 A. Well, she's a cashier in our cafeteria.

5 Q. What was her position in January or
6 February of 2009?

7 A. Same, cashier in the cafeteria.

8 Q. Are you familiar with her work performance?

9 A. Yes.

10 Q. And how is it?

11 A. Tish, since I've worked there, she's great.
12 She's got the customer service skills, she's one
13 of -- we have a small crew that works at night,
14 and she's one of the anchors that works with us.
15 It's kind of a hard shift to fill working until
16 2:30 in the morning; but she's got great
17 attendance, she gets along great with everybody
18 and she's kind of one of the team leaders of the
19 group.

20 Q. Has she had any customer service issues
21 aside from the one we're here to talk about
22 today?

23 A. None that I'm aware of.

24 Q. How has her drawer been as to the end of
25 the shift, as to whether they're accurate or

1 not?

2 **A.** I don't really check her out very much
3 because I work -- but to my knowledge, there's
4 been no issues. I think I would know if there
5 were any chronic issues with any cashier, but
6 not to my knowledge.

7 **Q.** Now I want to direct your attention to
8 January 2009, and the witnesses before you have
9 put the three dates in question: January 27, a
10 Tuesday; January 29th, a Thursday; and January
11 30th, a Friday.

12 At that time, January 2009, what was your
13 shift then?

14 **A.** The 10:00 a.m. to 8:00 p.m.

15 **Q.** So you had a brief period of time where you
16 overlapped with Ms. Hanson?

17 **A.** Yes.

18 **Q.** Now, on the first night in question with --
19 let me show you the documents.

20 (Thereupon, Respondent's Exhibit 3
21 was marked for purposes of
22 identification.)

23 **BY MR. CAMPBELL:**

24 **Q.** I'm showing you a two-page document. Have
25 you seen those two pages before?

1 **A.** Yes.

2 **Q.** And what are they -- let me ask you this.
3 Did you participate in the creation of those
4 still photos?

5 **A.** Yes.

6 **Q.** And why did you do that? Why did you
7 create these?

8 **A.** Well, do you want me to start from the
9 27th?

10 **Q.** Yes.

11 **A.** Just kind of talk through --

12 **Q.** Tell us what happened.

13 **A.** Well, on the 27th, it was around 7:00, 7:15
14 I believe, I was in our office, so I was out of
15 the cafeteria area, and Andrew, our night
16 manager, had come back and asked me to -- asked
17 me if I would please come out to the dining room
18 because he was dealing with a customer who was
19 upset and he wanted kind of some extra support,
20 extra management support in the dining room. He
21 was going back out to talk with him. In case it
22 escalated any further, he wanted to have, you
23 know, another manager out in the dining room to
24 help with whatever might need to happen.

25 **Q.** So you didn't hear anything that had

1 happened prior to Andrew coming to you?

2 **A.** No. I wasn't in the dining room.

3 **Q.** Tell us what happened once you went with
4 Andrew.

5 **A.** Well, Andrew went back out, and I just kind
6 of made myself -- I just went out in the dining
7 room. I didn't walk out directly with Andrew
8 and have a conversation, but I was kind of in
9 the area. And what was in question was whether
10 or not Tish had given the correct change to -- I
11 don't know his name.

12 **Q.** You're turning to Mr. Harting?

13 **A.** Yes, Mr. Harting.

14 And so Andrew had followed up, checked the
15 tape and went back and wanted to explain to him
16 that it appeared in the camera that Tish had
17 handed him the correct change, and that at this
18 point there's not much more we could do.

19 At the end of the night if Tish's draw was
20 over for any reason, then Andrew, they could
21 follow back up basically.

22 **Q.** What was Mr. Harting's reaction?

23 **A.** Well, again, I wasn't there so I'm kind of
24 generalizing what I --

25 **MR. FELDMAN:** Just testify as to

1 what you know, not what you heard or surmised.

2 **MS. McDONNELL:** Okay.

3 I heard him say that she was
4 stealing -- she stole his money and, you know,
5 that he wanted his money back. I wasn't really
6 part of that conversation, but I did hear that.

7 **BY MR. CAMPBELL:**

8 **Q.** Did you talk to Tish that evening before
9 you left at 8:00?

10 **A.** No, I did not. She was busy at the time.

11 **Q.** So you left at your normal time at 8:00?

12 **A.** Yes.

13 **Q.** And that would have been January 27th?

14 **A.** Yes.

15 **Q.** And now when you came out of the office
16 area into the cafeteria public area, Tish was
17 not in the vicinity of Mr. Harting at that time?
18 By the time Andrew asked you to come out, Tish
19 was not standing there with him?

20 **A.** Tish was ringing on the register.

21 **Q.** And all I'm saying is Andrew and
22 Mr. Harting were away from the register?

23 **A.** Correct. They were in the table area in
24 the dining room.

25 **Q.** In the dining room outside of the actual

1 cafeteria where you purchase the food?

2 **A.** Yes.

3 **Q.** Now, had Andrew asked you to come out?

4 **A.** Yes.

5 **Q.** Was Andrew upset?

6 **A.** He wasn't upset. I think he seemed a
7 little nervous and wanted to have -- you know,
8 wanted somebody else out there, another manager
9 out there.

10 **Q.** You left on the 27th. When is the next
11 time something came up as to Mr. Harting? If
12 you go home at 8:00 on the 27th, what's your
13 recollection as to the next incident or next
14 piece of --

15 **A.** Well, it was on Thursday, the 29th. Again,
16 I'll tell you what I know. I was in the back
17 office, I was not in the cafeteria area, and
18 Tish came back. The door was open, Tish came
19 back into the kitchen, and she was crying, she
20 was very upset, and so I just pulled her into
21 the office and asked her to explain to me -- I
22 didn't know what had happened. She was very,
23 very upset.

24 **Q.** What did she explain to you?

25 **A.** She explained to me that he had just gone

1 through her line.

2 Q. Who is "he"?

3 A. I'm sorry.

4 Q. Mr. Harting?

5 A. Mr. Harting. I'm sorry. He had just been
6 through her line, and she said Andrew had had an
7 exchange with him and he used a meal ticket, and
8 she was very upset. She thought that it had
9 been handled. She thought it was handled two
10 nights prior, and that he was back through. And
11 then she told me that -- then she told me that,
12 you know, she was upset because two nights ago
13 he was swearing at her, calling her a thief, and
14 she didn't understand why he was back.

15 Q. Did she discuss any racial comments?

16 A. Yes.

17 Q. Tell us about that.

18 A. She said that he called her a thieving "N"
19 word.

20 Q. You can say it. We understand you wouldn't
21 normally use it, but you can say it.

22 A. A "thieving nigger"; and that he had used
23 the "F" word, she was an "f-ing thief."

24 Q. Let me show you what's been marked as
25 Respondent's 2. You can take a look at that and

1 verify what it is. Do you recognize that?

2 **A.** Yes.

3 **Q.** What is that?

4 **A.** Tish wrote this. I asked Tish to write --
5 we asked Tish to write this.

6 **Q.** Why would you ask her to write something
7 like that?

8 **A.** It's just standard. It's what we do. If
9 there's ever any kind of incident or something
10 that happens, we always ask our employees,
11 anyone involved to write down their recollection
12 obviously while it's fresh in their mind.

13 **Q.** So you're following your company procedure?

14 **A.** Yes.

15 **Q.** Did you tell her what to write down?

16 **A.** No.

17 **Q.** Did she write it down herself?

18 **A.** She did.

19 **Q.** That's her handwriting?

20 **A.** Yes.

21 **Q.** Did she go off by herself to write it or
22 how did it take place?

23 **A.** I believe she did. I think she sat in our
24 office and wrote it down so she wouldn't be
25 distracted.

1 Q. What did you do next? After she wrote this
2 down at your request, what did you do next?

3 A. Well, you know, Andrew was kind of pulled
4 in at that point because we were both managers
5 on duty at that time. And, again, it was in the
6 evening when it was happening and I was getting
7 ready to leave; and the next day I contacted Sue
8 immediately.

9 MR. FELDMAN: You contacted who?

10 MS. McDONNELL: Sue Peplowski.

11 BY MR. CAMPBELL:

12 Q. Sue here?

13 A. Yes.

14 Q. She's our company representative sitting
15 next to me?

16 A. Yes.

17 Q. Why did you contact Sue?

18 A. She's HR, so all of a sudden it escalated
19 into a heightened issue and I know that Sue
20 needed to know. It's just protocol.

21 Q. Why did you consider it a heightened issue?

22 A. Well, because I had just learned that
23 Mr. Harting was abusive -- using abusive
24 language towards one of our employees that I
25 didn't know until Thursday, until the 29th. I

1 didn't know that had happened.

2 Q. The Respondent's Exhibit 3, the two photos,
3 why were those created?

4 A. Well, I think, one, we needed -- we wanted
5 to identify who he was and move forward. We
6 weren't quite sure if he was working with
7 construction, we weren't certain; and, two, we
8 wanted obviously to identify who this was so we
9 could address it.

10 Q. How were they created? Who actually did it
11 for you?

12 A. Well, we have a computer system. I think
13 Dave was in the office with me, Dave Hawk, the
14 other manager, and a gentleman from Protective
15 Service came up to teach us how to pull it up
16 and freeze frame it and put it in a picture.

17 Q. So the freeze frames were made in order to
18 help identify the person?

19 A. Yes.

20 Q. Who did you send them to?

21 A. Sue Peplowski.

22 Q. Were you involved after that? After
23 handing it off to Sue, was that the end of your
24 involvement, or what happened, if anything?

25 A. Well, I think Sue and I talked. I told her

1 what I knew, and she asked me to get statements,
2 which I did, and I got them to Sue. So just,
3 you know, as far as reaching out to Andrew and
4 John Rivera and asking them to get statements
5 and collecting that for Sue, I don't recall
6 anything too much further than having that
7 discussion on -- I'm sorry. I'm sorry. We did
8 talk that we didn't want to have Mr. Harting
9 back into the cafeteria.

10 **Q.** Who is "we"?

11 **A.** Sue, Dan Ballard, our operations manager,
12 was involved with conversations with that, the
13 management team, you know. We're a team, so we
14 were talking about what happened and all
15 concerned.

16 **Q.** Did you agree with the conclusion that
17 Mr. Harting should not be permitted to return?

18 **A.** Yes.

19 **MR. CAMPBELL:** I don't have any
20 further questions at this time.

21 CROSS-EXAMINATION

22 **BY MS. GRAGEL:**

23 **Q.** Ms. Dougherty McDonnell, I'm Susan Gragel
24 and I represent Local 310.

25 **A.** Hi.

1 **Q.** On January 27th, 2009 when you were in the
2 seating area of the cafeteria, would that be
3 fair?

4 **A.** Uh-huh.

5 **Q.** You went there at Andrew's request. How
6 far away were you from the place in the
7 cafeteria that Andrew was talking with
8 Mr. Harting?

9 **A.** I think eventually the closest that I was
10 was probably like at the corner of this table
11 to, in relation to maybe where you're sitting.

12 **MS. GRAGEL:** It looks to be,
13 Mr. Campbell, about 15 feet?

14 **MR. CAMPBELL:** That's fine.

15 **BY MS. GRAGEL:**

16 **Q.** Does that sound about right to you, 15
17 feet?

18 **A.** I would say so.

19 **MR. FELDMAN:** The witness doesn't
20 know, so continue on.

21 **BY MS. GRAGEL:**

22 **Q.** Was Mr. Harting seated at a cafeteria table
23 at that time?

24 **A.** Yes.

25 **Q.** Was he seated with others?

1 **A.** Yes.

2 **Q.** Do you know how many others were seated
3 with him?

4 **A.** I don't know.

5 **Q.** And you were not able to overhear
6 everything that was said between Andrew and
7 Mr. Harting?

8 **A.** No. I think their conversation had started
9 before I even got up there.

10 **Q.** There was nothing about that conversation
11 that caused you to initiate the report writing
12 phase of the process, true?

13 **A.** True.

14 **Q.** So whatever happened on January 27th didn't
15 cause you any concern as a manager?

16 **MR. CAMPBELL:** Whatever happened
17 that she saw?

18 **MS. McDONNELL:** Well, he was
19 clearly upset. Andrew was handling it, our
20 manager, and I knew there was going to be a
21 follow-up. Andrew had said that he would follow
22 up with him after the end of the night.

23 **BY MS. GRAGEL:**

24 **Q.** And did you as a fellow manager counsel
25 Andrew to write up something that day?

1 **A.** No.

2 **Q.** Did you as a fellow manager counsel Andrew
3 to have Ms. Hanson write up something on that
4 day?

5 **A.** No.

6 **Q.** Did you recognize Mr. Harting as a patron
7 of the cafeteria when you saw him on January
8 27th even though you might not have known his
9 name?

10 **A.** You mean had I seen him before?

11 **Q.** Yes.

12 **A.** No, I didn't recognize him.

13 **Q.** When you are working on the 10 to 8 -- 10
14 to 8 is your normal shift?

15 **A.** Uh-huh.

16 **Q.** Do you work that five days a week, four
17 days a week?

18 **A.** Five days a week.

19 **Q.** When you work that shift, do you spend most
20 of your workday out on the floor where food
21 service is being done for the customers, or do
22 you spend most of your shift working in the back
23 area of the office?

24 **A.** Mostly in the dining room.

25 **Q.** So from the work that you do in the dining

1 room, did you know at that time that
2 construction workers were eating in the
3 cafeteria?

4 **A.** It had not -- I had not noticed any, no. I
5 didn't take any special note to that.

6 **Q.** Did you know from your work as a manager
7 that University Hospital employees wear badges?

8 **A.** Yes.

9 **Q.** Did you know that construction workers wear
10 badges?

11 **A.** I'm sure I did. I don't know that I really
12 ever thought about it.

13 **Q.** Do you know whether the badges are the same
14 for University Hospitals and construction
15 workers or different?

16 **A.** I don't know for a fact, but I would guess
17 that they were different.

18 **Q.** And during the several months before
19 January 27th, 29th of 2009 that you worked
20 there, did you see individuals wearing badges
21 that identify them as something other than
22 University Hospital employees?

23 **A.** I don't recall specifically seeing that,
24 no.

25 **Q.** And are you able to describe here for us

1 where in relation to the cafeteria the Neonatal
2 Intensive Care Unit that is under construction
3 is located?

4 **A.** From inside the building, can I get to the
5 neonatal?

6 **Q.** Yes.

7 **A.** Yes.

8 **Q.** And is it a far walk or a close walk?

9 **A.** It's -- you walk out the cafeteria to a
10 hallway and you kind of shimmy over a little
11 bit. It's not too far. It's up the Charlie
12 Brown elevators, I think.

13 **Q.** Is it close to McDonald Hospital?

14 **A.** It's in Rainbow Hospitals, so --

15 **Q.** Did you at any time look at the cash
16 register camera that was over Tish Hanson's cash
17 register on January 27th?

18 **A.** We looked at a lot of footage. I'm sure
19 that we did.

20 **Q.** Did you at any time hear any audio
21 recordings of any encounter between Ms. Hanson
22 and Mr. Harting?

23 **A.** No.

24 **Q.** Was there any device in the vicinity of the
25 cash register that maintained audio recordings?

1 **A.** No.

2 **Q.** Did you work at the University Hospitals
3 cafeteria on Wednesday, January 28th?

4 **A.** I did.

5 **Q.** And did you have any -- I take it you were
6 to see Ms. Hanson on that day?

7 **A.** Sure, yes.

8 **Q.** And did she, on the day after the incident
9 with Mr. Harting and Ms. Hanson, seem fine to
10 you?

11 **A.** Nothing stands out.

12 **Q.** And the first time that Ms. Hanson appeared
13 upset to you was on January 29th, correct?

14 **A.** Yes.

15 **Q.** And that's when she became concerned
16 because Andrew had given a coupon or voucher to
17 Mr. Harting?

18 **A.** That he was back in the cafeteria, yes.

19 **Q.** Do you know whether Mr. Harting was in the
20 cafeteria on January 28th?

21 **A.** If he was, I didn't see him.

22 **MS. GRAGEL:** I have nothing
23 further. Thank you.

24 **MR. FELDMAN:** I have a few
25 questions for you.

1 **MR. CAMPBELL:** I don't have any
2 questions.

3 **MR. FELDMAN:** You have a security
4 system at the hospital, don't you?

5 **MS. McDONNELL:** We do.

6 **MR. FELDMAN:** Was there anything
7 that occurred on January 27th, 28th, 29th that
8 would have caused you to call them?

9 **MR. CAMPBELL:** That she was aware
10 of?

11 **MR. FELDMAN:** That she was aware
12 of. That caused you to call them.

13 **MS. McDONNELL:** We did call on --
14 to me, no, because I was -- when most of the
15 light was shed on this was the 29th. I was with
16 Tish in the back room. She had removed herself.
17 She was so upset she removed herself from the
18 situation, and I was kind of talking with Tish,
19 so I didn't feel at that point that we needed to
20 do that.

21 **MR. FELDMAN:** Was there any
22 situation on January 27th, 28th, 29th --

23 **MS. McDONNELL:** No.

24 **MR. FELDMAN:** Thank you. Thank
25 you very much for your testimony.

1 Next witness.

2 SUSAN PEPELOWSKI

3 of lawful age, a witness herein, was examined
4 and testified as follows:

5 **MR. FELDMAN:** For the record,
6 state your name.

7 **MS. PEPELOWSKI:** Susan Peplowski.

8 **MR. FELDMAN:** S-u --

9 **MS. PEPELOWSKI:** -- s-a-n.
10 P-e-p-l-o-w-s-k-i.

11 **MR. FELDMAN:** Somebody spells it
12 with an "F" in it.

13 **MS. PEPELOWSKI:** I get it spelled
14 wrong all the time.

15 **MR. FELDMAN:** Do you understand,
16 ma'am, that you're under oath?

17 **MS. PEPELOWSKI:** Yes.

18 **MR. FELDMAN:** You may inquire.

19 **MR. CAMPBELL:** Thank you.

20 DIRECT EXAMINATION

21 **BY MR. CAMPBELL:**

22 **Q.** Sue, could you tell us who your employer
23 is?

24 **A.** University Hospitals.

25 **Q.** How long have you been employed by

1 University Hospitals?

2 **A.** A little over four years.

3 **Q.** And what is your current position?

4 **A.** I'm a human resources manager.

5 **Q.** And how long have you held that position?

6 **A.** I was originally hired in as a human
7 resources generalist and I was promoted to
8 manager a year ago January.

9 **Q.** So January 2008?

10 **A.** Yes.

11 **Q.** Briefly describe what an HR manager does.

12 **A.** I support the operational areas of the
13 hospital, 16 departments, and I work with them
14 on everything. I'm considered their human
15 resources lead, so it could be employee
16 relations issues, succession planning, anything
17 along those lines.

18 **Q.** Okay. Is the cafeteria at the main campus,
19 is that under your HR duties?

20 **A.** Yes.

21 **Q.** And so you heard Ms. Hanson here, you saw
22 Ms. Hanson and heard her testify, is she one of
23 the employees that you're ultimately responsible
24 for as an HR function?

25 **A.** Yes.

1 Q. Where is your office located?

2 A. My office is in the MCCO Services Building.
3 It is on the site of campus that's closest to
4 the rapid track.

5 Q. When you say "campus," it's down on Euclid
6 Avenue, main campus?

7 A. Yes.

8 Q. Now, just so we fully understand the
9 cafeteria. The cafeteria sort of connects a
10 whole bunch of different buildings, right?

11 A. Yes.

12 Q. And people walking either directly to the
13 cafeteria or just to get from building to
14 building, they walk through that area?

15 A. Yes.

16 Q. High traffic?

17 A. Yes.

18 Q. Lots of employees, visitors, all types of
19 people in there?

20 A. Yes, lots of children, families, patients,
21 visitors.

22 Q. And Children's Hospital there at UH, what's
23 the name of it?

24 A. Rainbow Babies & Children's.

25 Q. You can walk through Rainbow and it's a

1 short walk to get to the cafeteria?

2 A. Yes.

3 Q. And NICU is part of Rainbow?

4 A. Yes.

5 Q. And that construction is going on right
6 there at Rainbow connected to the cafeteria?

7 A. Yes. It's completed now.

8 Q. I want to ask you about some of the
9 policies and procedures. We've been talking
10 about UH's policies and procedures.

11 Are you generally familiar with UH's
12 policies and procedures?

13 A. Yes.

14 Q. And part of your responsibility is for you
15 to identify that your management employees are
16 complying with those policies, right?

17 A. Yes.

18 Q. You investigate issues?

19 A. Uh-huh.

20 Q. Just say "yes."

21 A. Yes.

22 Q. And you make determinations as to whether
23 violations of policies have been -- I guess
24 employee or outside individuals have violated
25 those policies.

1 **A.** Yes, I work with the management team when
2 the issues come up and work with the employees
3 to make sure things are managed appropriately.

4 **Q.** I want to direct your attention to some of
5 the policies.

6 (Thereupon, Respondent's Exhibit 4
7 was marked for purposes of
8 identification.)

9 **BY MR. CAMPBELL:**

10 **Q.** I'm handing you what's been marked as
11 Respondent's 4, and ask you to tell me what is
12 that policy?

13 **A.** It's the Anti-Harassment and
14 Non-Discrimination policy. It talks about
15 making sure that we act appropriately at work,
16 that we don't say anything racial or
17 inappropriate comments to other individuals,
18 don't treat them the wrong way.

19 **Q.** Okay. Now, I want to look at number 3
20 under policy on page 1. See there that it
21 states, "Actions, words, jokes or comments," and
22 it goes through all those categories, "will not
23 be tolerated."

24 **A.** That's correct.

25 **Q.** And what is UH's human resources

1 department's view as to use of racial slurs by
2 employees and visitors on campus?

3 **A.** It's absolutely inappropriate; and under
4 the corrective action policy it's a reason for
5 discharge.

6 **MR. FELDMAN:** It's what? I'm
7 sorry.

8 **MS. PEPLOWSKI:** A reason for
9 discharge.

10 **MR. FELDMAN:** You sort of faded
11 off.

12 **MS. PEPLOWSKI:** Sorry.

13 **BY MR. CAMPBELL:**

14 **Q.** So if an employee of UH were to be found to
15 use the term "nigger," would they be subject to
16 discharge?

17 **A.** Absolutely.

18 **Q.** Is there a written warning before
19 discharge, or is that grounds for immediate
20 termination?

21 **A.** That's grounds for immediate termination.

22 **Q.** Is it any different for visitors on campus?

23 **MS. GRAGEL:** Objection.

24 **BY MR. CAMPBELL:**

25 **Q.** Any difference as to the zero tolerance

1 policy for visitors on campus?

2 **MR. FELDMAN:** If you know.

3 What's your objection?

4 **MS. GRAGEL:** Just that, that
5 there's no --

6 **MR. FELDMAN:** What, if she
7 doesn't know? You'll get a chance to test her
8 by way of cross-examination.

9 **MS. GRAGEL:** That, and the
10 question as I heard it was a compound question,
11 visitors and employees.

12 **BY MR. CAMPBELL:**

13 **Q.** I'll rephrase it.

14 Is that zero tolerance policy also
15 applicable to visitors on campus?

16 **A.** That is a zero tolerance policy regardless.

17 **Q.** And you've heard us talk about PLA. Let's
18 look at the key point under HR-20, the very
19 first bullet point there. Does by its terms
20 HR-20 apply to non-employees?

21 **A.** Yes.

22 **Q.** And have you applied HR-20 consistently as
23 to UH's zero tolerance for racial comments?

24 **A.** Yes.

25 **Q.** Has there ever been a time where an

1 employee, based on your investigation, has used
2 the term "nigger" but has not been discharged?

3 **A.** I have not had a time when someone used
4 that word. I have had other racial slurs that
5 the person was terminated, but not specifically
6 that word.

7 **Q.** Would you expect that if somebody used that
8 word they would be discharged?

9 **A.** Yes.

10 **Q.** Without any written warnings before
11 discharge?

12 **A.** Yes.

13 **MS. GRAGEL:** Objection. That's
14 a matter for the arbitrator.

15 **MR. CAMPBELL:** I think UH's
16 policies are for UH, not for the arbitrator.
17 We're here to talk about our policies and the
18 way we apply our policies.

19 **MR. FELDMAN:** The objection is
20 overruled. The answer stands. Next question.

21 **BY MR. CAMPBELL:**

22 **Q.** Now I want to now move on to another of the
23 UH policies.

24 (Thereupon, Respondent's Exhibit 5
25 was marked for purposes of

1 identification.)

2 **BY MR. CAMPBELL:**

3 **Q.** I've handed you what's been marked as
4 Respondent's Exhibit 5. Can you tell us what
5 that document is?

6 **A.** Workplace Violence.

7 **Q.** Is that a UH policy?

8 **A.** Yes.

9 **Q.** And what types of conduct does this policy
10 prohibit?

11 **A.** Intimidation, threats, physical attacks,
12 violence, property damage, weapons.

13 **Q.** Let's look again at key points on page 1,
14 the first bullet point. Is this policy by its
15 terms applicable to non-employees?

16 **A.** Yes.

17 **Q.** Is there a tolerance for threats or
18 intimidation at UH?

19 **A.** No.

20 **Q.** So this is, again, a zero tolerance policy?

21 **A.** Uh-huh.

22 **Q.** You have to answer "yes."

23 **A.** Yes.

24 **Q.** Has there been a time when you have found
25 based on your investigation that an individual

1 has intimidated or threatened another individual
2 that you have not recommended discharge?

3 **A.** No.

4 **MR. CAMPBELL:** Let me mark one
5 more.

6 (Thereupon, Respondent's Exhibit 6
7 was marked for purposes of
8 identification.)

9 **BY MR. CAMPBELL:**

10 **Q.** The PLA also refers to UH's Code of Conduct
11 in paragraph 7 of the PLA.

12 Do you recognize this document that's been
13 marked as Respondent's 6?

14 **A.** Yes.

15 **Q.** And what is it?

16 **A.** It's a Code of Conduct.

17 **Q.** And are all of the documents that I've
18 shown to you, Exhibits HR-20, HR-43 and Code of
19 Conduct, are all of those published policies
20 that UH enforces?

21 **A.** They're actually published on the Intranet.

22 **Q.** Tell us about that.

23 **A.** The hospital, in order to be cognizant of
24 too much paper usage because policies change
25 frequently, we have a Intranet where employees

1 can go and look up policies.

2 Q. Do your duties and responsibilities as HR
3 manager include enforcement of these three
4 policies?

5 A. Yes.

6 Q. And are these policies true and correct
7 copies of the policies that were in effect in
8 January of 2009 when this incident took place?

9 A. Yes.

10 Q. Now, tell us about how you learned of the
11 issues with Mr. Harting.

12 A. I received a call from Heather Dougherty I
13 believe it was first, on the 30th letting me
14 know that a situation had happened, that she had
15 not been aware of the seriousness of the
16 situation when it happened, but that she was
17 quite concerned because of information that
18 Lattisia had shared with her in regards to the
19 situation that happened.

20 Q. And Heather, we heard her testify today?

21 A. Yes.

22 Q. Is it unusual for a Sodexho manager to
23 contact you for a UH issue?

24 A. No, absolutely not. I work very closely
25 with them.

1 **Q.** Tell us, with Sodexho actually managing UH
2 employees, what is your relationship to the
3 cafeteria at UH on the main campus?

4 **A.** I work very closely with the management
5 staff in the cafeteria and the employees. I'm
6 there to make sure that we hold people
7 accountable to policy, and that the management
8 staff reacts appropriately when a situation
9 happens.

10 **Q.** And we heard Heather talk about written
11 statements. Was that at your direction?

12 **A.** Absolutely.

13 **Q.** And did Heather follow your policies and
14 procedures in this case?

15 **A.** Yes. Yes. As soon as she found out about
16 the situation, she contacted me, and she already
17 had a written statement.

18 **Q.** Based on your review of that statement, did
19 you get other statements as well?

20 **A.** Yes.

21 **Q.** What did you conclude that Mr. Harting --
22 what policies did Mr. Harting violate?

23 **A.** Well, there's the Professional Behavior
24 Policy, HR-63, and also these two policies that
25 you've given me, Workplace Violence and

1 Anti-Harassment.

2 Q. And HR-63 is what policy?

3 A. Professional Behavior.

4 Q. And describe that policy.

5 A. It talks about how you're expected to
6 behave in the workplace, that you shouldn't be
7 threatening, shouting, that you're always
8 expected to act in a professional manner.

9 Q. Now I want to turn to in the Code of
10 Conduct page 14 and just refer you to some of
11 the paragraphs there.

12 First of all, "Diversity and Equal
13 Employment Opportunity."

14 What's UH's position as to diversity and
15 Equal Employment Opportunity?

16 A. Well, we try to be a leader in that area.
17 We really try to embrace diversity because we
18 have a lot of diverse patients and family
19 members coming in, so we need to be respectful
20 of different cultures and different heritages so
21 no one is offended.

22 Q. Is it a core value at UH?

23 A. Yes.

24 Q. Now, Sue, if you go down further on page 14
25 under "Harassment and Workplace Violence," I

1 want to refer you to the arrows underneath the
2 paragraph, "Each of us has the right to work in
3 an environment free of harassment, intimidation
4 and workplace violence."

5 A. Yes.

6 Q. And there if we look at this, we first of
7 all prohibit degrading or humiliating jokes,
8 disparaging language, slurs, intimidation or
9 other harassing conduct, do you see that?

10 A. Yes.

11 Q. Is the use of the term "nigger" towards an
12 employee of UH a violation?

13 A. Yes.

14 Q. Is it a violation of HR-20?

15 A. Yes.

16 Q. Is it zero tolerance for such conduct?

17 A. Yes.

18 Q. If an employee partook in the conduct that
19 you understood that Mr. Harting partook in,
20 would he be subject to discharge?

21 A. Yes.

22 Q. Look further down, page 14 and go to the
23 fifth arrow on the second column, "Workplace
24 violence, including physical assaults, threat of
25 violence, stalking, robbery and other crimes,

1 violence directed at the employer, terrorism and
2 hate crimes."

3 When we see "threat of violence," did you
4 find that there was a violation of the workplace
5 violence policy here?

6 **A.** I thought it was threatening -- from the
7 way the situation was described to me, it was a
8 threatening situation, so I would feel, yes.

9 **Q.** Again, if an employee of UH partook in such
10 conduct and intimidated others, would they be
11 subject to discharge?

12 **A.** Yes.

13 **Q.** Are there warnings beforehand, or is this
14 immediate, zero tolerance?

15 **A.** It's a zero tolerance.

16 **Q.** So based on your knowledge as an HR
17 manager, is it your conclusion that Mr. Harting
18 violated UH's policies and procedures, including
19 but not limited to the Code of Conduct?

20 **A.** Yes.

21 **Q.** And I want to refer you to Joint Exhibit 1,
22 the PLA, and ask you to turn to page 3,
23 paragraph 7. Are you on page 3, paragraph 7?

24 **A.** Yes.

25 **Q.** It states that the unions are going to

1 cooperate and the covered projects will be
2 completed in accordance with UH's policies and
3 procedures as may be amended from time to time
4 in UH's Code of Conduct.

5 Did Mr. Harting violate UH's policies,
6 procedures and Code of Conduct?

7 A. Yes.

8 Q. Was Mr. Harting treated any differently
9 than anybody -- any other employee or visitor to
10 UH who would have partook in the same conduct?

11 A. Not that I'm aware of, no.

12 Q. You heard Ms. Hanson testify here today?

13 A. Yes.

14 Q. Have your conclusion as to his violations
15 of the policy, procedures and Code of Conduct
16 changed in any way based on her testimony?

17 A. No.

18 Q. And did she describe conduct that violated
19 the policies, procedures and Code of Conduct of
20 UH?

21 A. Yes, in a written statement.

22 Q. Did she describe that here today in her
23 verbal testimony?

24 A. Yes.

25 Q. Now, you saw the photos that Heather

1 reviewed. What were the photos used for?

2 **A.** Well, I asked Heather -- when she called me
3 about the situation, I asked Heather to see if
4 there was tape on the incident so that --
5 because she wasn't sure when she talked to me
6 who the gentleman was. So I asked her to see if
7 she could get photos on the incident so I could
8 send them to our director of new construction,
9 Tom Goins, to see if he could identify if the
10 male was a construction worker or a visitor.

11 **Q.** Was Mr. Goins able to identify Mr. Harting?

12 **A.** Yes.

13 **Q.** Did you give a recommendation to the
14 construction department as to Mr. Harting's
15 continued involvement with UH?

16 **A.** No, I did not. I had a conversation with
17 them, I collected statements and sent them to
18 them; and I did let them know that this kind of
19 action in the University Hospitals employ would
20 not be tolerated.

21 **Q.** And then the construction department at UH
22 made the determination as to Mr. Harting's
23 continued involvement with UH?

24 **A.** Yes.

25 **MR. CAMPBELL:** I don't have any

1 further questions. Sue may have some questions
2 for you.

3 CROSS-EXAMINATION

4 **BY MS. GRAGEL:**

5 **Q.** You've talked here today, Ms. Peplowski,
6 about HR-20, HR-40, HR-63. How many HR rules
7 are there?

8 **A.** There are several. I would say probably 30
9 or more.

10 **Q.** Well, if they're numbered at least up to
11 HR-63, does that mean there's at least 63 of
12 them, or are there gaps in the numbers?

13 **A.** No.

14 **Q.** Yes, there are gaps?

15 **A.** Yes.

16 **Q.** But there's a lot?

17 **A.** Yes.

18 **Q.** As you sit here today, do you know how, if
19 at all, Mr. Harting received copies of those HR
20 rules and policies?

21 **A.** I don't know.

22 **Q.** You talked about the Intranet. That's
23 different than the Internet, right?

24 **A.** Yes.

25 **Q.** It's spelled different?

1 **A.** Yes.

2 **Q.** The UH Intranet site in order to get access
3 to policies requires the individual to log in
4 with a password and identification number,
5 correct?

6 **A.** No.

7 **Q.** Does an outsider like me sitting here with
8 a laptop, can I get on the Intranet?

9 **A.** If you are on hospital property, yes, you
10 can get on the Intranet.

11 **Q.** Mr. Harting from his home would not be able
12 to access the Intranet, correct?

13 **A.** I don't believe so, no. I'm not an IT
14 expert.

15 **Q.** Do you know whether Mr. Harting, as a
16 construction worker assigned to this site, was
17 given access to the Intranet at any time during
18 his orientation process?

19 **A.** I don't know.

20 **Q.** You know he did not work for University
21 Hospitals, correct?

22 **A.** Yes.

23 **Q.** You know he was not under an independent
24 contractor agreement with University Hospitals?

25 **A.** I don't know.

1 Q. Do you know what an independent contractor
2 agreement is from your work as an HR person?

3 A. Not from my work as an HR person.

4 Q. Do you know what an independent contractor
5 agreement is?

6 A. Yes.

7 Q. What is it?

8 A. It's an agreement where a person comes in
9 and works for the hospital but is not employed
10 directly by the hospital.

11 Q. And is that defined in the HR policies of
12 University Hospitals?

13 A. It's possible.

14 Q. Do you know where in the policies it is
15 defined?

16 A. No.

17 Q. You have been asked during the course of
18 your testimony this afternoon about Respondent's
19 Exhibit 4, which is HR policy 20. Do you have
20 it handy?

21 A. Yes.

22 Q. In the key points section, does it refer to
23 visitors?

24 A. No.

25 Q. Does it refer to patients?

1 **A.** No.

2 **Q.** And you referenced contractors. Is that a
3 reference to the independent contractors that we
4 just discussed or don't you know?

5 **A.** I would imagine that it is, but I'm not
6 going to say positively.

7 **Q.** Did you look up the definition of
8 contractors when you made a recommendation to
9 your superiors as to the way the Mike Harting
10 incident should be handled?

11 **A.** I did not make a recommendation to them. I
12 informed them of how the situation would have
13 been handled had it been an employee.

14 **Q.** And at the time you gave that information,
15 you did that knowing that Mr. Harting was not a
16 University Hospitals employee?

17 **A.** Yes.

18 **Q.** Did you at the time that you made your
19 review of the situation look at the Project
20 Labor Agreement?

21 **A.** No.

22 **Q.** Did you look at the work rules of Gilbane
23 that are attached to the Project Labor
24 Agreement?

25 **A.** No.

1 **Q.** Have you at any time prior to today looked
2 at the Project Labor Agreement and all of its
3 attachments?

4 **A.** No.

5 **Q.** Was it of significance to you to know what
6 the Project Labor Agreement and Gilbane Safety
7 Plan provided as you were reporting on this
8 incident to your superiors?

9 **A.** No. I was concerned with my employee and
10 the way she had been treated.

11 **Q.** And as you looked into that concern of your
12 employee, was it important for you to get a true
13 sense of the facts?

14 **A.** I had that from a written statement from
15 her.

16 **Q.** Would it have been important for you to
17 talk directly with her?

18 **A.** I didn't feel it was necessary, no. I felt
19 that her statement was very clear and had
20 pertinent information in it.

21 **Q.** So did you talk to her immediate
22 supervisor, Andrew Powel?

23 **A.** I talked to Andrew briefly and I also
24 talked to Heather.

25 **Q.** Did you talk in person to anyone else

1 before you forwarded this packet of information
2 to your supervisors?

3 **A.** I had spoken -- before I forwarded what
4 packet of information?

5 **Q.** The details as to what happened and how
6 Mr. Harting would be treated if he had been a UH
7 employee. You gave that to somebody, right?

8 **A.** I spoke with Mr. Goins in regards to the
9 situation, I sent him pictures so we could
10 determine who it was. And I also spoke to
11 Mr. Ballard, who is the direct manager over the
12 retail services area.

13 **Q.** You did not talk to anybody from Gilbane?

14 **A.** No.

15 **Q.** You didn't talk to anybody from Ozanne?

16 **A.** No.

17 **Q.** You didn't talk to anybody from Laborers
18 Local 310?

19 **A.** No.

20 **Q.** You didn't talk to anybody from Rivera
21 Construction?

22 **A.** No.

23 **Q.** You don't know anybody from Rivera
24 Construction?

25 **A.** No.

1 **Q.** You were asked some questions about
2 Respondent's Exhibit 6, the Code of Conduct. Do
3 you have that handy?

4 **A.** Yes.

5 **Q.** Page 14, please. The bottom paragraph,
6 Ms. Peplowski, on page 14 reads, "If you have
7 concerns that you or a fellow employee may be a
8 potential target of physical violence by a third
9 party," then it goes on to say, "or concerns
10 that a patient or visitor may act violently, you
11 must report these concerns to your supervisor or
12 to Protective Services." Do you see that?

13 **A.** Yes.

14 **Q.** After you learned through the receipt of
15 the written report and your communications with
16 Heather on January 29th, did you counsel Andrew
17 Powel about his failure to make any report to
18 human resources or supervisors on January 27th?

19 **A.** I actually spoke to his supervisor, Dan
20 Ballard, and let him know that I was not pleased
21 with the way he had handled the situation; and I
22 asked Dan to counsel him since he was a Sodexho
23 employee and an employee of Dan.

24 **Q.** And you did that because you recognized
25 that no one on January 27th had come forward to

1 anybody about anything, correct?

2 **A.** Correct.

3 **MS. GRAGEL:** Thank you. Nothing
4 further.

5 **MR. FELDMAN:** I just have a
6 question or two.

7 Are all of the procedures that you've
8 caused to be placed in the record, which are in
9 your lap, was it your thought that these apply
10 to an employee as the grievant is here without
11 having had the opportunity of giving him the
12 published procedures?

13 **MS. PEPLOWSKI:** I can only speak
14 about employees. All employees are directed
15 that they need to review policies and procedures
16 that are on the Intranet.

17 **MR. FELDMAN:** Ma'am, in order for
18 a rule to be broken, a person has to know about
19 the rule. Rules have to be published, they have
20 to be reasonable and they have to be
21 evenhandedly applied. And in this particular
22 case, what opportunity did the grievant have of
23 viewing all of these rules?

24 **MS. PEPLOWSKI:** My thought is it's
25 common sense that you act professionally when

1 you're in a professional business.

2 **MR. FELDMAN:** Now you're talking
3 common sense, but a moment ago you were talking
4 about a written rule.

5 What opportunity did the grievant
6 have in reviewing the rules of the workplace in
7 written form as you've published them here?

8 **MS. PEPLOWSKI:** He wasn't a person
9 that I would work with. I would think that is
10 up to the construction company to provide you
11 with that information.

12 **MR. FELDMAN:** Well, the only
13 point I make is that the employer -- or the
14 hospital is complaining about conduct contrary
15 to rule when the individual wasn't given the
16 opportunity to review the rules prior to the
17 discipline being meted out.

18 **MS. PEPLOWSKI:** I don't know that
19 he wasn't given the opportunity because I didn't
20 deal with him. I don't know what opportunity he
21 was given.

22 **MR. FELDMAN:** Let me approach it
23 a different way. Maybe I'm not making myself
24 clear.

25 You expected the employer

1 construction workers to be cognizant of your
2 rules, written rules; is that a fair statement?

3 **MS. PEPLOWSKI:** Yes.

4 **MR. FELDMAN:** How do they get
5 knowledgeable?

6 **MS. PEPLOWSKI:** Through their
7 contact with Gilbane and through that process
8 when they're hired into the property.

9 **MR. FELDMAN:** They're given
10 copies of these?

11 **MS. PEPLOWSKI:** I don't know if
12 they're given copies of those, but I know
13 that -- I have been told that they have
14 conversations as to the expectation of
15 professional behavior.

16 **MR. FELDMAN:** But you have no
17 personal knowledge whether or not they --

18 **MS. PEPLOWSKI:** No, I don't.

19 **MR. FELDMAN:** Would it be a
20 surprise to you if you couldn't produce any
21 evidence to show publication to the employee?

22 **MS. PEPLOWSKI:** I really don't -- I
23 can't say. I don't know one way or another
24 because they are on the Intranet, and anyone on
25 the property has access to them, so I don't know

1 what kind of access he would have had.

2 **MR. FELDMAN:** Thank you.

3 Any further questions?

4 **MR. CAMPBELL:** Yes. I have a few
5 follow-up to that.

6 REDIRECT EXAMINATION

7 **BY MR. CAMPBELL:**

8 **Q.** First of all, if you could turn to the
9 Project Labor Agreement, Joint Exhibit 1,
10 paragraph 7, page 3, paragraph 7.

11 **A.** Okay.

12 **Q.** Am I reading correctly that the unions are
13 to partake in the construction of this project
14 in accordance with UH's policies and procedures
15 and UH's Code of Conduct?

16 **A.** Yes.

17 **Q.** And I think you've said it. The union has
18 told Mr. Harting to act as a gentleman. From an
19 HR standpoint, is that consistent with acting as
20 a professional?

21 **A.** Yes.

22 **Q.** Treating people correctly --

23 **A.** Respect them.

24 **Q.** Gilbane telling him to treat others as the
25 way he would treat his family and best friends.

1 **A.** Yes.

2 **Q.** Is that in any way consistent with HR-20 or
3 the professionalism conduct or the Code of
4 Conduct --

5 **A.** Yes.

6 **Q.** -- or any of the policies we reviewed?

7 **A.** Yes.

8 **Q.** It's consistent with that?

9 **A.** Uh-huh.

10 **Q.** And if you're treating somebody as you'd
11 like to be treated, you're going to be complying
12 with the HR-20 and the Workplace Violence policy
13 and all the others; is that right?

14 **A.** Yes.

15 **Q.** If a visitor came on the campus who was
16 visiting a patient and partook in the same
17 conduct of Mr. Harting, would that visitor be
18 excluded in your view?

19 **A.** Yes.

20 **Q.** And that visitor may not have seen the
21 policies, did they?

22 **A.** Right.

23 **Q.** And you're an experienced HR professional.
24 If somebody visits the cafeteria, uses racial
25 epithets, threatens your employees, is there any

1 legal defense that says, "Hey, sorry, we can't
2 do anything about it; that person wasn't
3 familiar with our policies so we have to live
4 with it"?

5 **A.** No, absolutely not.

6 **Q.** So if this employee turned to UH and said
7 that you're putting me out there as the victim
8 of harassment and violence, UH could be subject
9 to a lawsuit?

10 **A.** Yes.

11 **MR. CAMPBELL:** I don't have any
12 further questions.

13 **MR. FELDMAN:** Anything further of
14 this witness?

15 **RE CROSS-EXAMINATION**

16 **BY MS. GRAGEL:**

17 **Q.** This Project Labor Agreement, Joint
18 Exhibit 1, contains, you know, 100 or so pages
19 with a lot of rules and policies, drug testing,
20 Workers' Compensation and elaborate rules about
21 safety, and you know, because you've been here
22 today, do you not, that there are disciplinary
23 procedures as part of this Project Labor
24 Agreement?

25 **A.** Yes.

1 **Q.** Wouldn't you expect as an HR person for an
2 individual like Mr. Harting or his union to say
3 this is the document we follow, Joint Exhibit 1?

4 **A.** I would think that based on how the
5 document reads that they need to follow this
6 document and the other ones that are referenced.

7 **Q.** And how, if you know, would Local 310,
8 which has its office down at 32nd and Euclid
9 Avenue, get access to your University Hospitals'
10 Intranet?

11 **A.** You could come on site and access it.

12 **MS. GRAGEL:** Nothing further.

13 FURTHER REDIRECT EXAMINATION

14 **BY MR. CAMPBELL:**

15 **Q.** If Local 310 said, "We want to train our
16 employees on UH's policies, procedures and Code
17 of Conduct," would you refuse to give them those
18 policies?

19 **A.** No.

20 **Q.** If Local 310 asked you to come out and give
21 training to their employees that are going to be
22 on site, would you have refused such requests?

23 **A.** No.

24 **Q.** Do you think that if you're going to send
25 your union employee into a work site, it would

1 be reasonable to verify what that owner and what
2 that work site expects from your employees?

3 **A.** Yes.

4 **MR. CAMPBELL:** I don't have any
5 further questions.

6 **MR. FELDMAN:** Next witness.
7 Thank you very much.

8 (Thereupon, a recess was taken.)

9 MARGARET HEWITT
10 of lawful age, a witness herein, was examined
11 and testified as follows:

12 **MR. FELDMAN:** Your name is?

13 **MS. HEWITT:** Margaret Hewitt?

14 **MR. FELDMAN:** H-e-w --

15 **MS. HEWITT:** -- i-t-t.

16 **MR. FELDMAN:** And you understand
17 that you are under oath?

18 **MS. HEWITT:** Yes, I do.

19 **MR. FELDMAN:** You may inquire.

20 **MR. CAMPBELL:** Thank you.

21 DIRECT EXAMINATION

22 **BY MR. CAMPBELL:**

23 **Q.** Where are you employed?

24 **A.** University Hospitals.

25 **Q.** And how long have you been employed by

1 University Hospitals?

2 A. Two years.

3 Q. And what is your position?

4 A. I'm vice president of construction
5 services.

6 Q. And how long have you held that position?

7 A. For two years.

8 Q. And tell us in simple terms what are your
9 duties and responsibilities?

10 A. I am responsible for all construction that
11 occurs at University Hospitals, that is, the
12 main campus, six community hospitals and all of
13 our ambulatory facilities.

14 Q. Now, we've heard about Vision 2010. Is
15 that part of your responsibilities?

16 A. Yes, it is.

17 Q. What is Vision 2010?

18 A. Vision 2010 is a strategic program that has
19 been put together to build two new hospitals.
20 One is the Ahuja Medical Center in Beachwood,
21 the second is a cancer hospital. We also
22 relocated our Neonatal Intensive Care Unit from
23 the second floor of Rainbow Babies and
24 Children's Hospital to the fourth floor, and we
25 are relocating our Center for Emergency Medicine

1 from the core of our facility to the front door
2 at Euclid.

3 Q. Is this a large project?

4 A. It is. It's approximately \$800 million in
5 construction.

6 Q. Is it a high-profile project?

7 A. Very much so, yes.

8 Q. Have you been involved with city and county
9 political figures as to this construction
10 project?

11 A. We have been involved in all levels of
12 government, Federal, state, county, city, as
13 well as local UCI district, University Circle.

14 Q. I want to direct your attention to Joint
15 Exhibit 1. Mr. Billington is going to hand it
16 to you. I want to ask you a question.

17 Have you seen that document before today?

18 A. Yes, I have.

19 Q. And what is Joint Exhibit 1?

20 A. It is our Project Labor Agreement.

21 Q. Now, if we turn on this one to Attachment A
22 on page 15 --

23 A. Yes.

24 Q. -- is this the City of Cleveland Project
25 Labor Agreement?

1 **A.** Yes, this is.

2 **Q.** And the covered projects for this include
3 the projects that are being completed with
4 construction projects at the main campus at
5 Euclid Avenue?

6 **A.** Yes.

7 **Q.** Now, were you involved in the negotiation
8 of the Project Labor Agreement?

9 **A.** Yes, I was.

10 **Q.** If I could turn to the next attachment,
11 Attachment B on page 16, tell us a little bit
12 about -- I don't need to know the specifics, but
13 a little bit about Attachment B.

14 **A.** Attachment B is what we've included as a
15 part of the three-party negotiations between the
16 City of Cleveland, University Hospitals and the
17 labor unions. It addresses our community
18 effort, our diversity goals and our local hiring
19 in terms of helping to build the economy.

20 **Q.** Are diversity and equal opportunities
21 important values at UH?

22 **A.** Very much so.

23 **Q.** Would they be considered core values?

24 **A.** Yes.

25 **Q.** Would diversity, is that a major reason for

1 the Project Labor Agreement, diversity issues?

2 **A.** Yes, it was.

3 **Q.** And Attachment B and some other paragraphs
4 of this Project Labor Agreement set forth
5 paragraphs that address diversity and issues
6 relating to diversity?

7 **A.** Yes, they do.

8 **Q.** Now, I want to refer you to page 3 of the
9 Project Labor Agreement, paragraph 7. I want
10 you to read paragraph 7 to yourself and let me
11 know once you've read through it, paragraph 7 on
12 page 3.

13 **A.** (Witness complies with request.)

14 Okay.

15 **Q.** See the reference on page -- on line 5 that
16 the construction project is going to be
17 completed in accordance with UH's policies,
18 procedures and Code of Conduct?

19 **A.** Yes.

20 **Q.** And was that a term negotiated by
21 University Hospitals when negotiating this
22 Project Labor Agreement?

23 **A.** Yes, it was.

24 **Q.** Now, we're here today as to Mr. Harting,
25 and I want to ask you, how did you become

1 familiar with Mr. Harting?

2 **A.** I was informed via e-mail that came to my
3 desk that said that there was an altercation
4 with an employee in our cafeteria, and attached
5 to that was the investigation and the report --

6 **MR. FELDMAN:** Was the word
7 "altercation" used?

8 **MS. HEWITT:** Sorry?

9 **MR. FELDMAN:** Was the word
10 "altercation" used, or is that your phraseology?

11 **MS. HEWITT:** I can't recall, so
12 I'll have to say that's my phraseology.

13 **BY MR. CAMPBELL:**

14 **Q.** Was it your understanding that Mr. Harting
15 used any racial epithets?

16 **A.** Yes.

17 **Q.** Was Mr. Harting's altercation with a UH
18 employee?

19 **A.** Yes.

20 **Q.** Was it your understanding that Mr. Harting
21 used any other derogatory terms other than
22 racial slurs, like thief or anything else?

23 **A.** Yes. My understanding was that he used
24 curse words, he called her a thief, as well as
25 racial terms, yes.

1 Q. And is it your understanding that
2 Mr. Harting was angry?

3 A. Yes.

4 Q. Is it your understanding that the UH
5 employee felt intimidated?

6 A. Yes.

7 Q. Now, Ms. Peplowski --

8 MR. FELDMAN: I would be much
9 happier if we wouldn't have a bunch of "yes" and
10 "no" answers.

11 MR. CAMPBELL: Okay.

12 BY MR. CAMPBELL:

13 Q. Are you familiar with Sue Peplowski?

14 A. Yes, I am.

15 Q. Ms. Peplowski testified that she didn't
16 make the decision as to Mr. Harting.

17 Who made the decision as to Mr. Harting's
18 continued association with UH?

19 A. I did.

20 Q. What was your decision?

21 A. My decision was to have him removed from
22 any UH construction projects that were going on
23 at the main campus.

24 Q. If you could tell the arbitrator why did
25 you make that decision?

1 **A.** I made that decision because the
2 construction workers are guests to the UH
3 campus. They come in to do work, to work on a
4 project, and anyone who comes to our campus
5 should be respectful of the employees who work
6 there and the patients and their families. We
7 have given instructions to the construction
8 workers not to leave the job sites really; and
9 so we understand that sometimes people go to the
10 cafeteria, which is against the policy we've
11 issued; but you are to be respectful and to
12 behave in a respectful way to all employees and
13 to all patients and their families at University
14 Hospitals.

15 **Q.** And what was your conclusion as to
16 Mr. Harting's conduct?

17 **A.** That it was disrespectful; and the
18 impression I got is it was threatening to that
19 employee. She felt intimidated and threatened.

20 **Q.** As to University Hospitals, what is its
21 view as to the use of racial slurs?

22 **A.** 100 percent unacceptable.

23 **Q.** Would it surprise you to hear that the
24 unions are saying that they were unaware of UH's
25 policies as to diversity and racial tolerance?

1 **MS. GRAGEL:** Objection. I don't
2 think that's been said.

3 **MR. CAMPBELL:** I'll put some
4 background.

5 **BY MR. CAMPBELL:**

6 **Q.** Are you familiar with John Gilbane?

7 **A.** Yes.

8 **Q.** Are you familiar with Terry Joyce?

9 **A.** Yes.

10 **Q.** Are they representatives, leaders of Local
11 310 Laborers?

12 **A.** Yes.

13 **Q.** Have you had meetings where you've
14 discussed diversity and UH's --

15 **A.** I have not had a meeting with John Gilbane,
16 but I have had several meetings with Terry
17 Joyce.

18 **Q.** Have you made clear to Terry Joyce UH's
19 views on discrimination?

20 **A.** Yes.

21 **Q.** Would it surprise you that Local 310 of the
22 Laborers did not understand UH's policy against
23 discrimination and intimidation and violence?

24 **MS. GRAGEL:** Objection. There's
25 been no testimony in the record as to 310

1 claiming that they don't understand that UH has
2 a policy. That's not -- there's been no witness
3 who has testified on that subject.

4 **MR. CAMPBELL:** Then she can answer
5 it then. It will be consistent with your
6 position.

7 **MS. HEWITT:** Do you want me to
8 answer the question?

9 **MR. FELDMAN:** Answer the
10 question. There's been testimony here that --
11 there's a bunch of manuals placed into the
12 record by your HR manager in this hearing that
13 the code of responsibility or --

14 **MR. CAMPBELL:** Code of Conduct.

15 **MR. FELDMAN:** -- Code of Conduct
16 that has all kinds of thoughts in it concerning
17 diversity and racial slurs and what have you,
18 but when asked if they've ever been disseminated
19 to the union, the answer was no. Now, you're
20 going to tell us that you've had conversations,
21 but have you ever -- let's get those items,
22 those manuals in front of the witness. Hand
23 them to the witness. You're familiar with those
24 I'm sure, aren't you, ma'am?

25 **MS. HEWITT:** Yes, I am.

1 **MR. FELDMAN:** Were those
2 disseminated to union?

3 **MS. HEWITT:** I don't know.

4 **MR. FELDMAN:** Well, they talk
5 about the things that you're talking about. And
6 one of the bases for discipline is knowledge of
7 a rule that you're breaking, and the rules
8 evidently are in those manuals, although I
9 haven't read them. But without knowledge of
10 them, you can hardly be breaking them.

11 **MS. HEWITT:** Well, one of the
12 things that we did as construction services is
13 we asked for the construction workers not to
14 leave the construction sites so they don't have
15 to know all of these rules. If no one goes to
16 the cafeteria or you go anyplace other than your
17 job site, you don't interact with any UH
18 employees, you don't interact with any UH
19 patients. So we felt that was a way to keep
20 everyone from having to memorize everything
21 about UH, that if you stayed restricted to your
22 construction site where we don't allow UH
23 employees, unless they're construction services
24 employees, to enter, then we wouldn't have that
25 interaction. So we tried to limit that

1 interaction in that way.

2 **MR. CAMPBELL:** Can I go on?

3 **MR. FELDMAN:** Yes. I just want
4 you to know that I'm paying close attention to
5 this issue of knowledge.

6 **MR. CAMPBELL:** Well, I think the
7 Project Labor Agreement, it explicitly --

8 **MR. FELDMAN:** I haven't had a
9 chance to read it, but I will.

10 **MR. CAMPBELL:** -- applies them.
11 And if the unions are sending their members on
12 campus and they have doubts, then they should do
13 it and ask.

14 **BY MR. CAMPBELL:**

15 **Q.** Let me ask you this: Was Mr. Harting and
16 other Local 310 Laborers permitted to be in the
17 cafeteria to eat?

18 **A.** According to our rules, no.

19 **Q.** And that's part of the overall rule of
20 they're not to be interacting with patients and
21 visitors and employees?

22 **A.** Correct.

23 **Q.** If Terry Joyce and Local 310 had asked your
24 construction services department to review UH's
25 policies and procedures and Code of Conduct,

1 would you have objected to that request?

2 **MS. GRAGEL:** Objection. There's
3 no foundation on the record for that kind of
4 question.

5 **MR. FELDMAN:** You may answer.

6 **MS. HEWITT:** No, we would not
7 have objected to that.

8 **BY MR. CAMPBELL:**

9 **Q.** Has Local 310 ever asked to review the
10 policies and procedures to your knowledge?

11 **A.** No.

12 **Q.** Has Local 310 ever informed you that they
13 were unaware that other employees were not to
14 use racial epithets on campus?

15 **A.** No.

16 **Q.** Has Local 310 or any of the unions ever
17 informed you that they were unaware that their
18 employees were not to intimidate UH employees,
19 visitors or patients?

20 **A.** No.

21 **Q.** Is it common sense that a construction site
22 would prohibit such conduct towards employees,
23 visitors and patients?

24 **MS. GRAGEL:** Objection. We've
25 got real leading here.

1 objection is form. We've now led this witness
2 for about ten minutes, and what she knows and
3 what she knows about 310 I think is valid, but
4 if, if, if. If Mickey Mouse walks in the room,
5 there may be an "if" there, too.

6 **MR. FELDMAN:** We're all getting
7 tired. Are there any further questions?

8 **BY MR. CAMPBELL:**

9 **Q.** Based on your 20 years of experience in the
10 construction industry, would it be surprising to
11 you that a union would take the position that
12 its members were unaware that they needed to act
13 professionally when on an owner's site?

14 **A.** It would surprise me.

15 **Q.** Would it surprise you that in this day and
16 age that a union would take the position that
17 its members were unaware they should not be
18 using racial epithets while on the work site?

19 **A.** That would surprise me.

20 **Q.** If Local 310 is taking the position that
21 its employees may use racial epithets while on
22 site, does UH have a problem with permitting
23 Local 310 employees on the work site?

24 **MS. GRAGEL:** Objection.

25 **MR. FELDMAN:** Next question.

1 **MR. CAMPBELL:** I don't have any
2 further questions.

3 **MR. FELDMAN:** Anything of this
4 witness?

5 **MS. GRAGEL:** Yes. Thank you.

6 CROSS-EXAMINATION

7 **BY MS. GRAGEL:**

8 **Q.** Vice President Hewitt, when you joined
9 University Hospitals, that would have been
10 sometime in June 2007?

11 **A.** It was April 2007.

12 **Q.** And when you got to your position, did your
13 duties include participating in the negotiations
14 over the terms of the Project Labor Agreement?

15 **A.** Yes.

16 **Q.** And did you attend various meetings about
17 that project?

18 **A.** Yes, I did.

19 **Q.** And ultimately the negotiations resulted in
20 the document that's been marked Joint Exhibit 1?

21 **A.** Yes.

22 **Q.** And do you know during those negotiations
23 that University Hospitals was represented by
24 Mr. Campbell and his law firm?

25 **A.** Yes.

1 Q. Do you know who prepared the typed version
2 of the document that ultimately was signed and
3 is now marked here as Joint Exhibit 1?

4 A. The individual who prepared it?

5 Q. Do you know who drafted it?

6 A. No, I don't know the individual who drafted
7 it.

8 Q. Did you play any role, Vice President
9 Hewitt, in reviewing the final document to make
10 sure that it matched what had been discussed and
11 was appropriate for signature?

12 A. Yes, I did.

13 Q. And as part of that review, Ms. Hewitt, did
14 you assure that all of the attachments that
15 needed to be part of the agreement were attached
16 to it?

17 A. No, I did not.

18 Q. In your role as the vice president of
19 construction for the University Hospitals
20 project, do you interact with Gilbane?

21 A. I do.

22 Q. Do you have a specific person or a group of
23 people that you interact with at Gilbane?

24 A. I do.

25 Q. Who are those?

1 **A.** Mr. Tom Lair, Mr. John Sosnowski, Mr. Roger
2 Brown.

3 **Q.** And are you familiar with what's attached
4 to the Project Labor Agreement as Exhibit D,
5 which is the Gilbane Project Safety Plan?

6 **A.** Yes. I know that that is attached.

7 **Q.** It's dated August 27, 2007.

8 Did you review this document to be sure
9 that it was appropriate for use at the Vision
10 2010 construction projects before it was
11 implemented?

12 **A.** I cannot recall the level of review I gave
13 this document.

14 **Q.** You have reviewed?

15 **A.** I cannot recall the level of review, but,
16 yes, I have seen it. I'm familiar with it.

17 **Q.** On page 15 of 67 of Exhibit D, Ms. Hewitt,
18 have you reviewed this page in connection with
19 any of your work as the vice president of
20 construction, this disciplinary page?

21 **A.** I have not used this page, no.

22 **Q.** Did you review it at any time before making
23 a decision regarding the removal of Mr. Harting
24 from UH job sites?

25 **A.** No, I did not because I did not ask Gilbane

1 to execute the decision. I made that decision.

2 Q. Did you communicate that decision to
3 Mr. Harting?

4 A. Not directly, no. I communicated it to
5 Gilbane.

6 Q. With the expectation that Gilbane would
7 then act upon it?

8 A. Correct.

9 MR. FELDMAN: Is Gilbane a
10 signatory to that agreement?

11 MS. HEWITT: No, they are not.

12 BY MS. GRAGEL:

13 Q. And Gilbane's role on the project as you
14 understand it is construction manager?

15 A. Correct.

16 Q. And in a short version, what does a
17 construction manager do for University Hospitals
18 on these projects?

19 A. A construction manager is responsible for
20 negotiating and executing all of the contracts
21 for construction, and then they manage the work
22 that is delineated in those contracts.

23 Q. When you contacted Gilbane with the
24 instructions that they remove Mr. Harting, did
25 you ask Gilbane to check to make sure that the

1 removal would be handled in accordance with the
2 safety plan?

3 **A.** No, I did not.

4 **Q.** The decision, according to the testimony,
5 to remove Mr. Harting from the job site was made
6 in very early February 2009. Does that match
7 your memory as to about when that took place?

8 **A.** Yes.

9 **Q.** And you made that decision after you
10 reviewed an e-mail and some written materials?

11 **A.** The attached investigation report, the
12 video that was attached, as well as the
13 complaint that was written by the cashier.

14 **Q.** And in that packet of materials, was there
15 a statement from Mr. Harting regarding his
16 version of events?

17 **A.** I don't recall if there was a statement
18 from Mr. Harting.

19 **Q.** Did you have in your possession at the time
20 you made your decision to remove him information
21 from or on behalf of Mr. Harting that indicated
22 that he denied using any racial epithet to any
23 individual on the campus?

24 **A.** I do have that understanding that he has
25 denied that.

1 **Q.** Did you talk with him to find out what he
2 said happened?

3 **A.** No, I did not.

4 **Q.** Did you ask anyone associated with
5 University Hospitals to talk with Mr. Harting to
6 find out what he said happened?

7 **A.** No, I did not.

8 **MR. FELDMAN:** Excuse me. Why?

9 **MS. HEWITT:** Why? Because I
10 felt between the video and the evidence that was
11 presented, it was overwhelming, regardless of
12 the racial epithet --

13 **MR. CAMPBELL:** She's answering
14 your question, sir.

15 **MR. FELDMAN:** Excuse me.

16 **MR. CAMPBELL:** I just want to make
17 sure the record --

18 **MR. FELDMAN:** I understand and I
19 hear, but this is very important to me.

20 **MR. CAMPBELL:** I understand. But
21 it is as well for the record.

22 **MR. FELDMAN:** In this country we
23 have what is known as due process. Due process
24 involves the investigation of an activity. Is
25 it my understanding that you didn't investigate

1 this?

2 **MS. HEWITT:** Well, Mr. Harting
3 was not supposed to be in the cafeteria
4 according to the rules that we have issued to
5 the construction workers.

6 **MR. FELDMAN:** Is that a
7 dischargeable event in itself?

8 **MS. HEWITT:** I can determine it
9 to be.

10 **MR. FELDMAN:** Well, I'm asking
11 you why you didn't give the due process to
12 Mr. Harting. After all, his employment was on
13 the line.

14 **MS. HEWITT:** I did not realize
15 his employment was on the line. I did not ask
16 for him to be fired.

17 **MR. FELDMAN:** You didn't ask for
18 him to be fired?

19 **MS. HEWITT:** No.

20 **MR. FELDMAN:** What did you ask
21 when you told Gilbane?

22 **MS. HEWITT:** I asked him to be
23 removed from the UH property, that's what I
24 asked him, not to be returned to a UH
25 construction project. I did not ask for him to

1 be fired at all, ever.

2 **MR. FELDMAN:** Didn't you think
3 that that was tantamount to his being fired,
4 ma'am?

5 **MS. HEWITT:** No, not when you
6 are a union employee. You are assigned to
7 another project. When my project ends, he would
8 not be fired. At some point my construction
9 project is going to be over, he would not be
10 fired. The union is assigned to different
11 projects, so no --

12 **MR. FELDMAN:** Next question.

13 **BY MS. GRAGEL:**

14 **Q.** Within the same day or the next day of you
15 making the decision to ask for Mr. Harting to be
16 removed from the project, you met with Sebastian
17 Trusso, who is sitting here, did you not?

18 **A.** Yes.

19 **Q.** And Mr. Ray Clegg from the union also came?

20 **A.** Yes.

21 **MR. TRUSSO:** Kevin.

22 **BY MS. GRAGEL:**

23 **Q.** I'm sorry, Kevin Clegg, who is Ray Clegg's
24 son, came to meet you at the project?

25 They asked you to reconsider your decision,

1 did they not?

2 **A.** They did.

3 **Q.** And they informed you that Mr. Harting
4 would be unemployed if your decision stood to
5 remove him from the property as a result of the
6 incident in the cafeteria?

7 **A.** I don't recall them saying that he would be
8 unemployed.

9 **Q.** They informed you, did they not, that he
10 denied engaging in racial or any kind of abusive
11 conduct in the cafeteria?

12 **A.** Yes, they did.

13 **Q.** But notwithstanding what they told you
14 about that position, you did not change your
15 decision?

16 **A.** Correct.

17 **Q.** And one more set of questions.

18 Your office, if I understand correctly, at
19 least your main office is at the University
20 Hospitals administrative center on Warrensville
21 Road?

22 **A.** Yes.

23 **Q.** I would also guess that you don't always
24 spend your full workday in that office and you
25 come down to the projects?

1 **A.** I do.

2 **Q.** When you are at the main campus at
3 University Hospitals, do you eat in the
4 cafeteria?

5 **A.** Yes, I do.

6 **Q.** Have you seen individuals that you know to
7 be associated with construction work in the
8 cafeteria?

9 **A.** I have; and I've asked them to leave.

10 **Q.** Did you check, for example, in any of the
11 workplace trailers or break rooms in the
12 hospital to see if Gilbane had posted notices to
13 the construction staff to stay out of the
14 cafeteria?

15 **A.** I have checked some of their boards and it
16 was posted.

17 **Q.** Where did you see it posted and when?

18 **A.** If I recall correctly, it's posted in their
19 main trailer that sits at the corner of Euclid
20 and University Drive.

21 **Q.** And when did you see that sign up?

22 **A.** I see it every time I go.

23 **Q.** When is the first time that you saw that
24 sign?

25 **A.** I can't recall the first time I saw it

1 there.

2 **Q.** Before or after this grievance?

3 **A.** It would have been before because I've been
4 in that trailer many times.

5 **Q.** You are wearing here today some type of
6 badge. Is that your University Hospitals badge?

7 **A.** It is.

8 **Q.** The construction workers are issued badges,
9 are they not?

10 **A.** They are.

11 **Q.** Do they look the same as yours or
12 different?

13 **A.** They look different in the sense they have
14 a white background instead of a yellow
15 background.

16 **Q.** And if I understand the process,
17 construction workers get that badge after they
18 review some type of training video that Gilbane
19 provides.

20 **A.** Yes.

21 **Q.** Have you seen the video?

22 **A.** Yes, I have.

23 **Q.** Is there any place in the video that
24 informs the construction workers at the main
25 campus that they are not to go into the

1 cafeteria?

2 **A.** No.

3 **Q.** And is there any part of that training
4 video that instructs the construction workers
5 that they should go to the Intranet to find the
6 UH Code of Conduct and employment policies?

7 **A.** I don't think so.

8 **Q.** And when you made your decision to remove
9 Mr. Harting from the University Hospitals work
10 sites, did you know how long Mr. Harting had
11 been working at the project?

12 **A.** No, I did not.

13 **Q.** Did you know for whom he had been working?

14 **A.** The specific contractor?

15 **Q.** Yes.

16 **A.** No.

17 **Q.** Did you take any steps to determine by
18 talking to Gilbane or to anyone else in the
19 construction part of the project to find out
20 about Mr. Harting and the kind of worker that he
21 was?

22 **A.** No.

23 **MR. FELDMAN:** Ma'am, do you have
24 any mechanism for investigating matters of this
25 sort on file that you use?

1 **MS. HEWITT:** We would ask our
2 security personnel to investigate.

3 **MR. FELDMAN:** Did you ask them in
4 this case?

5 **MS. HEWITT:** I believe the
6 information I got had data from our security
7 personnel. I know they sent us videos because
8 that's where the videos are, in the security
9 department.

10 **MR. FELDMAN:** Is that the only
11 investigative activity in this case, by the
12 security people?

13 **MS. HEWITT:** I think HR also did
14 some investigation, our HR department.

15 **MR. FELDMAN:** So you don't have
16 any protocol for such activity, do you?

17 **MS. HEWITT:** Not in the
18 construction services department, no.

19 **MR. FELDMAN:** Is there any reason
20 for that?

21 **MS. HEWITT:** It's never happened
22 before, so it was the first incident since I've
23 been at UH that this has happened.

24 **MR. FELDMAN:** Well, the thing
25 that is disturbing is that there seems to be

1 fraud on your part that you can arbitrarily,
2 capriciously, accomplish a removal of a --

3 **MR. CAMPBELL:** Sir, I just want to
4 state for the record --

5 **MR. FELDMAN:** The record will
6 speak for itself.

7 **MR. CAMPBELL:** And I just want to
8 object to the use -- I mean, we have sat through
9 a day where this individual has admitted to
10 extreme misconduct. We've heard the individuals
11 testify -- to say this is an arbitrary -- I
12 don't know how this could possibly be, with all
13 due respect. You're here to hear all of the
14 evidence and make a decision --

15 **MR. FELDMAN:** I'm here to hear
16 all the evidence, and I want to know exactly why
17 there was no investigation in this matter.

18 **MR. CAMPBELL:** We have heard
19 Ms. Peplowski, we've heard Heather, we've heard
20 Mr. Hawk --

21 **MR. FELDMAN:** There's no protocol
22 here --

23 **MR. CAMPBELL:** -- all three have
24 testified to an investigation.

25 **MR. FELDMAN:** You can write in

1 your brief as you see fit.

2 **MR. CAMPBELL:** Absolutely.

3 **MR. FELDMAN:** You have a case in
4 the Federal Court system and you can proceed
5 with that, too, should the decision here go
6 against you.

7 **MR. CAMPBELL:** I would ask you to
8 hear the evidence before you make a decision.

9 **MR. FELDMAN:** I want to know why
10 there was no investigation. Maybe there was but
11 there's no protocol established. Maybe there
12 was and maybe I should know if there's a
13 protocol of some sort that I'm missing here in
14 the evidence. That's all. You evidently --
15 your office doesn't have a protocol.

16 **MS. HEWITT:** We do not. My
17 office -- the department of construction
18 services is only two years old, so it only
19 started when I started. We had never had an
20 incident like this before, so we did not foresee
21 we needed a protocol to address an issue like
22 this because we never anticipated --

23 **MR. FELDMAN:** Perhaps this
24 opinion award and hearing will cause one to be
25 fostered.

1 At any rate, continue. Do you have
2 anything further?

3 **MR. CAMPBELL:** I'd just object
4 to that. The arbitrator has explicitly stated
5 he's reached a decision without even hearing all
6 the evidence.

7 **MR. FELDMAN:** I didn't say I've
8 already reached a decision.

9 **MR. CAMPBELL:** I strongly object
10 to that.

11 **MR. FELDMAN:** What decision did I
12 reach?

13 **MR. CAMPBELL:** I think you've been
14 pretty clear as to how you've reached the
15 decision --

16 **MR. FELDMAN:** I haven't even
17 heard one-half of the case.

18 **MR. CAMPBELL:** Exactly. And
19 that's my objection to you stating that you've
20 reached a conclusion.

21 **MR. FELDMAN:** I didn't say I
22 reached a conclusion.

23 **MR. CAMPBELL:** With all due
24 respect, the record will speak to that.

25 **MR. FELDMAN:** Yes, it will.

1 **BY MS. GRAGEL:**

2 **Q.** Ms. Hewitt, you testified a few minutes ago
3 that at times you've been in the cafeteria and
4 saw construction workers there and you asked
5 them to be removed.

6 Did you take any action on any of those
7 occasions to initiate discipline to the
8 construction workers that you found in the
9 cafeteria?

10 **A.** I did contact John Sosnowski of Gilbane and
11 express that it should be emphasized that they
12 should not be in the cafeteria. That is against
13 policy.

14 **Q.** Did you instruct Mr. Sosnowski in those
15 situations to issue citations to the workers
16 that you found in the cafeteria?

17 **A.** No.

18 **Q.** And you know from the Project Labor
19 Agreement and the Gilbane policy that a citation
20 is the first process in progressive discipline
21 to get somebody out the door?

22 **A.** Can I ask a question? I don't consider
23 this a safety issue. Your using a safety manual
24 for a process that I don't consider a safety
25 issue, so I'm having a little disconnect there.

1 Did the union representative over here
2 inform you that Mr. Harting denied any sort of
3 abusive conduct when you spoke with him after
4 excluding Mr. Harting from the work site?

5 **A.** I believe they did when they came to my
6 office.

7 **Q.** And I think Ms. Gragel asked you
8 specifically to confirm that they denied that
9 Mr. Harting had partaken in any abusive conduct;
10 is that right? Not just the racial epithet, but
11 any abusive conduct.

12 **A.** When they came to my office, we all
13 understood an incident had occurred. No one was
14 in denial that an incident had occurred.

15 **Q.** I'm just asking you, it was their position
16 that Mr. Harting denied everything, right?

17 **A.** Yes.

18 **Q.** Now, Mr. Harting testified here today and
19 admitted, and the evidence from the union was
20 presented that this altercation took place for
21 over two and a half minutes. Mr. Harting
22 admitted to calling her a thief, calling a UH
23 employee a thief in front of other employees and
24 visitors and other individuals who were on site
25 in the cafeteria. He admitted to being loud.

1 He admitted to cussing. He admitted to telling
2 other managers that she was a thief.

3 Based on those admissions from Mr. Harting,
4 was he appropriately excluded from the work site
5 based on his conduct?

6 **MS. GRAGEL:** Objection. That's
7 an ultimate decision from the arbitrator.

8 **MR. FELDMAN:** She may answer.

9 **MS. HEWITT:** I'm sorry. Just
10 based on that information, he would have been
11 excluded from the work site.

12 **BY MR. CAMPBELL:**

13 **Q.** Just based on --

14 **A.** Just based on that.

15 **Q.** -- two and a half minutes of cussing,
16 yelling and calling an employee a thief?

17 **A.** Yes.

18 **Q.** Is that consistent with the union telling
19 you that Mr. Harting had not partaken in any
20 abusive conduct? Is Mr. Harting's position
21 consistent with the union's position that he
22 didn't partake in any abusive conduct?

23 **A.** I'm sorry. I'm learning every word means
24 something here.

25 **MS. GRAGEL:** Objection.

1 **MS. HEWITT:** That is not
2 consistent.

3 **BY MR. CAMPBELL:**

4 **Q.** Do you find that to be abusive conduct?

5 **A.** Yes.

6 **Q.** Was the union truthful to you when they
7 came to you and said that Mr. Harting denied --

8 **MS. GRAGEL:** Objection.

9 **MR. CAMPBELL:** You brought it out.
10 You brought it out, and we're here about
11 credibility and about why there was no due
12 process. The union has come to UH and said he's
13 denied everything. He's come here in front of
14 this arbitrator and admitted under oath that he
15 cussed, called her a thief, two and a half
16 minutes worth of yelling and screaming and
17 calling her a thief in front of other people.
18 We certainly can call into question their
19 credibility.

20 **MS. GRAGEL:** There is no
21 evidence that that kind of behavior lasted for
22 the two and a half minutes. There's no evidence
23 at all of what was said during any part of the
24 two and a half minutes because there's no audio
25 on the tape.

1 **MR. FELDMAN:** Next question.

2 **MR. CAMPBELL:** Are you telling her
3 she can't answer that question?

4 **MR. FELDMAN:** Repeat it.

5 **BY MR. CAMPBELL:**

6 **Q.** Was Mr. Harting's conduct abusive?

7 **A.** Yes.

8 **Q.** Did union tell you he had partaken in
9 abusive conduct?

10 **A.** Not in detail.

11 **Q.** In order to get a UH badge as you were
12 asked by Ms. Gragel, I'm going to show you the
13 information it goes through as to what's been
14 marked as Respondent's Exhibit 1, and I want to
15 turn to the Code of Safe Practices. Now, in
16 that Code of Safe Practices, I want to refer you
17 on that page to a couple of the provisions.
18 First of all, number 7, "I will eat only in
19 designated areas and dispose of trash in proper
20 containers."

21 Have the unions been advised that the union
22 employees are not to eat in the UH cafeteria?

23 **A.** Yes.

24 **Q.** So you would expect Local 310 to have
25 advised Mr. Harting that his designated area was

1 not the UH main campus cafeteria?

2 **A.** Yes.

3 **Q.** Now, if we go on here, number 11, "I will
4 conduct myself in a professional manner," do you
5 see that?

6 **A.** Yes.

7 **Q.** Is conducting yourself in a professional
8 manner consistent with Mr. Harting's admissions
9 that I have told you about today?

10 **A.** No.

11 **Q.** It goes on to state: "I will not engage in
12 any violence, horseplay, practical jokes or
13 other behavior obnoxious to the general public."

14 Did you find Mr. Harting's conduct as I've
15 described here today conduct that is violent or
16 obnoxious to members of the general public?

17 **A.** Yes.

18 **Q.** It will go on further to state: "I will
19 not harass anyone else on site or any member of
20 the public, sexually or otherwise." Do you see
21 that statement?

22 **A.** Yes.

23 **Q.** Is the use of a racial epithet considered
24 harassment in your opinion?

25 **A.** Yes.

1 **Q.** Mr. Harting further testified today that he
2 has been informed by his union, and not only on
3 the UH work site but on all work sites that he
4 goes onto on behalf of Local 310, he is to act
5 as a gentleman.

6 Do you find that based on his admissions
7 that I've told you here today that he was acting
8 as a gentleman on the UH work site as to your UH
9 employee?

10 **A.** No.

11 **MR. CAMPBELL:** I don't have any
12 further questions.

13 **MR. FELDMAN:** Anything further of
14 this witness?

15 **MS. GRAGEL:** Yes. Thank you.

16 RE CROSS-EXAMINATION

17 **BY MS. GRAGEL:**

18 **Q.** In caret number 7 of this Code of Conduct,
19 which you have in front of you, there's a
20 stipulation about designated areas.

21 For individuals that were working in the
22 NICU unit in January 2009, where was the
23 designated area?

24 **A.** I'm sorry?

25 **Q.** Where was the designated areas for

1 individuals working in the NICU unit?

2 **A.** In the construction area on the fourth
3 floor.

4 **Q.** And where did individuals who were working
5 in the NICU unit in June of 2009 purchase their
6 food?

7 **A.** They are not allowed to purchase it in our
8 cafeteria.

9 **Q.** Is there anywhere on site in the University
10 Hospitals property for individuals to purchase
11 food when working with what would be the second
12 shift?

13 **A.** There is no place available that we supply.
14 As we call it, Roach Coach might show up that
15 they could go to off the site and purchase, but
16 no place that University Hospitals supplies.

17 **Q.** And typically those portable kitchens are
18 there during the daytime shifts?

19 **A.** Yes.

20 **Q.** Not second shift?

21 **A.** Correct.

22 **Q.** And you've been asked a series of questions
23 here recently about what Mr. Campbell heard or
24 understood from information that Mr. Harting
25 gave briefly this morning. But you've not had

1 an opportunity to fully discuss this matter with
2 Mr. Harting?

3 **A.** No, I have not.

4 **Q.** And you haven't formed a personal opinion
5 as to whether he is a believable or not
6 believable person because you've never met him?

7 **A.** Correct.

8 **MS. GRAGEL:** Nothing further.

9 **MR. CAMPBELL:** I don't have
10 anything further.

11 **MR. FELDMAN:** Next witness.

12 **MR. CAMPBELL:** We have no further
13 witnesses.

14 **MR. FELDMAN:** But reserve the
15 right to call --

16 **MR. CAMPBELL:** We close subject to
17 rebuttal and impeachment. We also close subject
18 to the same statements that I made initially as
19 to our objections as to arbitrability as this
20 arbitrator found --

21 **MR. FELDMAN:** As far as I'm
22 concerned you can preserve that.

23 **MR. CAMPBELL:** So with that, we
24 are done except for impeachment and rebuttal.

25 **MR. FELDMAN:** I don't have my

1 appointment book with me. Can you give me some
2 dates that you are available? Do you have your
3 appointment book?

4 **MR. CAMPBELL:** Right now I could
5 do -- right now we are at the 9th already. The
6 earliest date I could do would be the 16th.
7 Would you be available on the 16th?

8 **MS. GRAGEL:** Mr. Campbell and
9 Mr. Arbitrator, as of Thursday of this week,
10 Mr. Harting, whose wife recently is recovering
11 from a major surgery, is on a two-week vacation
12 to take a family trip to Florida. He returns
13 June 30th, and he is an important witness, so
14 we're looking to schedule the first week of
15 July.

16 **MR. FELDMAN:** When?

17 **MS. GRAGEL:** First week of July.

18 **MR. FELDMAN:** Give me a date.

19 **MR. CAMPBELL:** I can do July 2nd.

20 **MS. GRAGEL:** If that's open for
21 your calendar, that's fine.

22 **MR. FELDMAN:** I'll check it and
23 be back to you tomorrow. Is your secretary on
24 duty?

25 **MR. CAMPBELL:** Let me give you my

1 cell phone, and I keep my calendar because I
2 have things that come up with clients. My cell
3 phone number is 216-385-5347.

4 **MR. FELDMAN:** Is there an
5 alternate date?

6 **MR. CAMPBELL:** To tell you the
7 truth, I go on vacation the week of the 6th, and
8 I am in trial the week of the 20th; I believe
9 it's going to be moved to the week of the 27th.
10 Potentially the week of the 13th, but with a
11 trial, I can try for it, but it's tough.

12 **MR. FELDMAN:** We'll try for July
13 2nd. That's what day of the week?

14 **MS. GRAGEL:** That's a Thursday.

15 **MR. FELDMAN:** Thank you very
16 much.

17 **MS. GRAGEL:** Do you want to move
18 your exhibits?

19 **MR. CAMPBELL:** Do you want us to
20 move formally now or wait until the end?

21 **MR. FELDMAN:** You can move for
22 your exhibits. I'll grant it. Do you have any
23 objection?

24 **MS. GRAGEL:** None. None as to
25 admissibility.

1 **MR. CAMPBELL:** Respondent's
2 Exhibits 1 through 6.

3 **MS. GRAGEL:** The issue that I
4 have is the video. You had it in e-mailable
5 form and I have it in that form too. We can
6 e-mail it to the court reporter to get
7 Exhibit 2.

8 **MR. CAMPBELL:** I don't have a
9 problem with that.

10 **MS. GRAGEL:** What's your
11 preference?

12 **MR. FELDMAN:** Do whatever you
13 desire.

14 (Thereupon, the proceedings were
15 concluded at 5:00 o'clock p.m.)
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1 C E R T I F I C A T E

2

STATE OF OHIO,)

3

) SS:

SUMMIT COUNTY,)

4

5

I, Stephanie R. Dean, Court Reporter and
Notary Public within and for the State of Ohio,
duly commissioned and qualified, do hereby
certify that these proceedings were taken by me
and reduced to Stenotypy, afterwards prepared
and produced by means of Computer-Aided
Transcription and that the foregoing is a true
and correct transcription of the proceedings so
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10 I do further certify that these proceedings
were taken at the time and place in the
11 foregoing caption specified.

I do further certify that I am not a
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I do further certify that I am not, nor is
14 the court reporting firm with which I am
affiliated, under a contract as defined in Civil
15 Rule 28(D).

IN WITNESS WHEREOF, I have hereunto set my
16 hand and affixed my seal of office at Akron,
Ohio on this 15th day of June, 2009.

17

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Stephanie R. Dean

23

My commission expires August 30, 2010.

24

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PARKING STICKER # _____

HELMET STICKER # _____

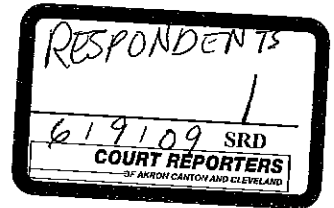
Safety Orientation Comprehension Quiz

Name: _____ Date: ____/____/____

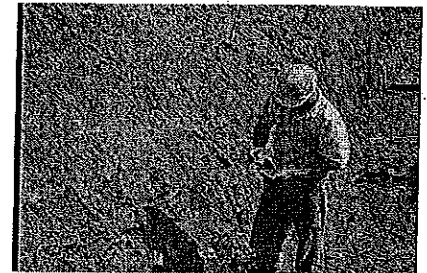
I pledge to follow the safety rules as explained to me in this orientation and work in a safe manner.

Signature: _____

Company: _____



1. It's OK to enter an excavation without a competent person inspecting the soil? T F



2. Safety glasses or eye protection must be worn at all times when you are on the job site. T F

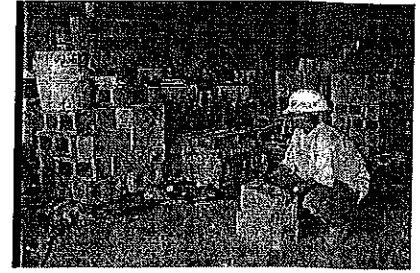


3. I only need to wear protective eyewear when I am cutting? T F



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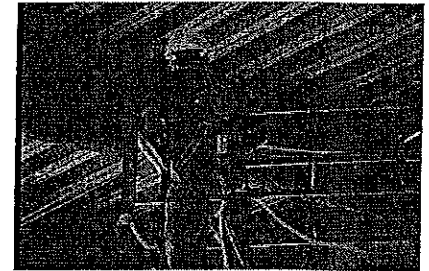
4. Lifting using your legs and keeping your back straight will help avoid back injury. T F



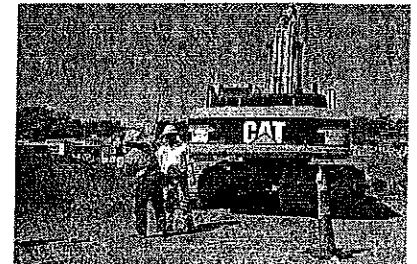
5. A respirator must be worn when you are working around harmful chemicals such as Silica, Asbestos, Lead. T F



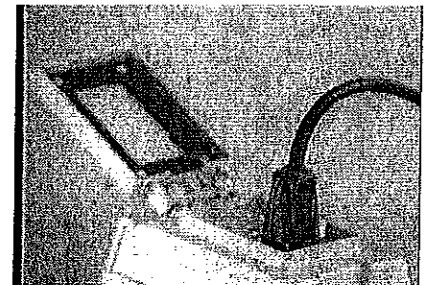
6. I have to tie off with a harness when working in a scissor lift. T F



7. Cranes and track excavators can kill you if you stand or walk where the counterweight can strike you. T F



8. GFCI will save my life and must be used. T F

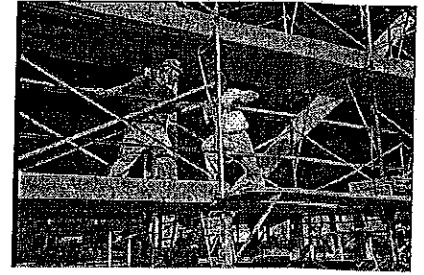


9. Falls can kill. Fall protection such as a harness or guardrail must be used when you are more than 6 feet up. T F



Gilbane

10. Scaffolds must have guardrails in place before you work off them. T F





PROJECT - CODE OF SAFE PRACTICES

Each individual working on this project will be required to attend a safety orientation meeting at the start of their assignment. At the conclusion of the meeting, each will be required to sign a Code of Safe Practices as follows, indicating their agreement to follow that Code while on the Project. This does not relieve the trade contractor of any responsibility to properly orient and train their employees for the specifics of their work.

Sample Page: Code of Safe Practices

Project Name _____

Employee Name _____

I agree to abide by the following Code of Safe Practices while on this project.

1. I will work in a safe manner, protecting others, and myself and will report observed hazards to my supervisor. If not addressed, I will further report these hazards to the Gilbane Superintendent.
2. I will dress appropriately for the project, wearing a long or short-sleeved shirt, long pants, and work boots with ankle protection, reinforced toes, and substantial soles.
3. I will use personal protective equipment as required by my trade, and will wear hard hat and safety glasses at all times.
4. I will abide by the six-foot fall protection rules, including use of harnesses where required.
5. I will park only in designated areas and observe a ten-mile per hour speed limit on site.
6. I will not smoke or use tobacco products of any type on site, except in designated areas.
7. I will eat only in designated areas and dispose of trash in proper containers.
8. I will not use any intoxicants or other controlled substances on the project.
9. I will report all injuries and accidents involving persons or property.
10. I will not bring any weapons, including knives with blades over 4 inches, onto the site.
11. I will conduct myself in a professional manner and not engage in any violence, horseplay, practical jokes, or other behavior obnoxious to the general public. I will not harass anyone else on site or any member of the public, sexually or otherwise. I will not bring onsite or write or draw any sexually explicit materials.
12. I will not use any headset-type radios or other music players or personal televisions on site.
13. I will comply with the security procedures established throughout the project, for entrance to the site.

Signed _____

R000697

Date _____
Name _____
Company _____

Please circle the correct answer

Fire Safety:

1. University Hospitals Case Medical Center fire and medical emergency phone number is?
A – 911, B- 4357, C – 5555, D – 844-1000
2. Hot Work permits are required to be taken out everyday when cutting, brazing, torching spark producing work is performed.

True or False
3. Fire Extinguishers classified as an ABC type can extinguisher what type of fire?
A – Wood and paper fires; B – Grease or Flammable Liquid fires; C- Electrical fires;
D – All of the Above
4. During a fire alarm activation an announcement is made stating "Code Red". This is the code word indicating there is a fire alarm activation in the building.

True or False

Infection Control:

1. Dust control is one of the most important considerations in hospital construction.

True or False
2. Guidelines that need to be posted and followed at any worksite:

Infection Control Manual or Infection Control Risk Assessment

MEMORANDUM

To: Kelly Lockhart
UHHS Sr. Project Manager

From: Gilbane

Date: _____

Re: UHHS Badge Request

Please complete the following:

Construction Employee Name: _____

Construction Company Name: _____

Trade: _____

For Access Into: _____

Please complete the following:

1. Confirmation of employee viewing of both UHCMC and
Gilbane's Safety Videos _____
2. Confirmation by Gilbane personnel of employee Photo ID _____
3. Successful completion of criminal background check _____
4. Successful completion of drug screening _____
5. Definition of areas requiring access:

R000699

Gilbane

PARKING STICKER # _____

HELMET STICKER # _____

Safety Orientation Comprehension Quiz

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2. Safety glasses or eye protection must be worn at all times when you are on the job site. T F

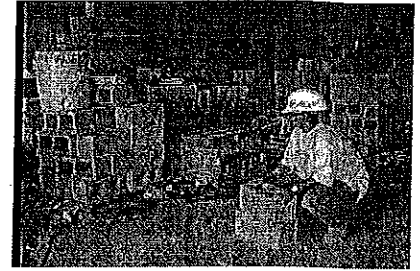


3. I only need to wear protective eyewear when I am cutting? T F

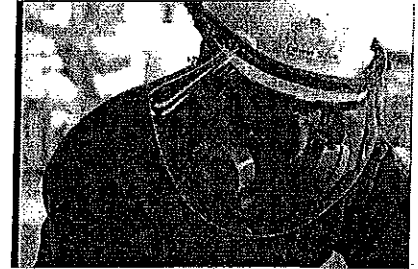


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4. Lifting using your legs and keeping your back straight will help avoid back injury. T F



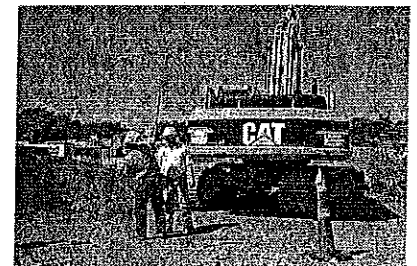
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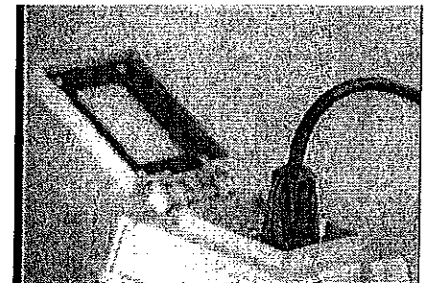
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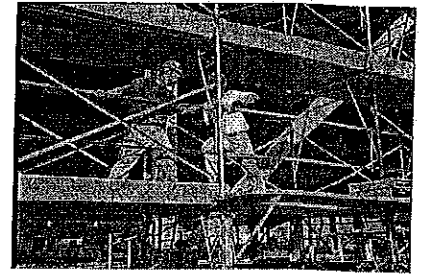


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Gilbane

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5. I will park only in designated areas and observe a ten-mile per hour speed limit on site.
6. I will not smoke or use tobacco products of any type on site, except in designated areas.
7. I will eat only in designated areas and dispose of trash in proper containers.
8. I will not use any intoxicants or other controlled substances on the project.
9. I will report all injuries and accidents involving persons or property.
10. I will not bring any weapons, including knives with blades over 4 inches, onto the site.
11. I will conduct myself in a professional manner and not engage in any violence, horseplay, practical jokes, or other behavior obnoxious to the general public. I will not harass anyone else on site or any member of the public, sexually or otherwise. I will not bring onsite or write or draw any sexually explicit materials.
12. I will not use any headset-type radios or other music players or personal televisions on site.
13. I will comply with the security procedures established throughout the project, for entrance to the site.

Signed _____

R000703

Date _____
Name _____
Company _____

Please circle the correct answer

Fire Safety:

1. University Hospitals Case Medical Center fire and medical emergency phone number is?
A – 911, B- 4357, C – 5555, D – 844-1000
2. Hot Work permits are required to be taken out everyday when cutting, brazing, torching spark producing work is performed.

True or False
3. Fire Extinguishers classified as an ABC type can extinguisher what type of fire?
A – Wood and paper fires; B – Grease or Flammable Liquid fires; C- Electrical fires;
D – All of the Above
4. During a fire alarm activation an announcement is made stating "Code Red". This is the code word indicating there is a fire alarm activation in the building.

True or False

Infection Control:

1. Dust control is one of the most important considerations in hospital construction.

True or False
2. Guidelines that need to be posted and followed at any worksite:

Infection Control Manual or Infection Control Risk Assessment

MEMORANDUM

To: Kelly Lockhart
UHHS Sr. Project Manager

From: Gilbane

Date: _____

Re: UHHS Badge Request

Please complete the following:

Construction Employee Name: _____

Construction Company Name: _____

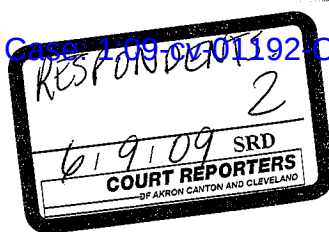
Trade: _____

For Access Into: _____

Please complete the following:

1. Confirmation of employee viewing of both UHCCMC and
Gilbane's Safety Videos _____
 2. Confirmation by Gilbane personnel of employee Photo ID _____
 3. Successful completion of criminal background check _____
 4. Successful completion of drug screening _____
 5. Definition of areas requiring access: _____
-

R000705



(Amcra) } 7:29:32 - 1:29:09
FOOTAGE

Tuesday 13, 2009 1:27:09 - 7:22:15.

about 7:00pm - 8:00pm

A man came to my register
His Items cost 5.80 He gave me
\$6.00 A five And A 1.00 Bill
I gave him .20 He said to me
I gave you a 10.00 Bill you
give me .20 I replied very
nicely No Sir you gave me
6.00 He said I gave you
10.00 I said I'll call my
managers hold on He replied
yeah call him cause you
aint gonna steal my money
Bu now Someone else called

R000706

Andrew hearing all the
Comotion Andrew came out
By the time he was getting
to my register the man
was screaming Angerly at
me you Chief you gonna
give me my fucking money
fucking Nigger Andrew
pulled him to the side.
~~I don't~~ first he told him
he would look at the Camera
the man told him do that
look at the damn Camera
shes a Chief She gonna
give me my fucking money
Andrew pulled him out

R000707

the line or asked him out
the line to talk to him
my line was long I don't
know what was said after
that. I went to talk to Andrew
He told me the man was still
in the Cafe and he didn't want
him to see us talking he
didn't want him to become more
angry. I was thinking at
that moment I should have been
the one angry I was a
chief and a Digger so
I went back to my register
after Andrew walked away
from me.

The Camera Showed that
6.00 was given to me.
my bank was over Andrew
told me that he told the
man that if my bank was
over 4.00 or 5.00 he would refund
his money and give him a
meal ticket, I felt if it was
over it wasn't him the camera
said so. January 29, 2008 the
man comes through my line
again Andrew meets him and
replies I told you I would
take care of this for you.
I could have fainted because
I feel the man thanks I stole
from him.

R000709

Andrews reasoning for
 this was to restore his
 faith in us. He gave ~~him~~ ^{a meal} a ticket
 what about me I didnt take
 nothing from the Gentle man
 who's not so Gentle (customer).
 I didnt report this because
 my manager had handled
 this I thought But to
 I dont know in my face.

Tish

Lattisia Hanson

I can't remember who
 was in the Cafe at
 the time. E/S managers
 were there I do remember
 that they had stopped one
 man looking

R000710

R000711